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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1936

## No. 638

HIRAM STEELMAN, TRUSTEE IN BANKRUPTCY OF WILLIAM FOX, A BANKRUPT, PETITIONER,

*vs.*

ALL CONTINENT CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 11, 1937.

CERTIORARI GRANTED FEBRUARY 15, 1937.

# SUPREME COURT OF THE UNITED STATES

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*vs.*

## ALL CONTINENT CORPORATION

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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## IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

No. 24,431

In the Matter of William Fox, Bankrupt

Docket Entries

1936.

May 29. Petition & Schedules filed 9:15 A. M. at Camden, N. J. Adjudication.
Order of reference to Robert E. Steedle, Atlantic City, Referee.
Petition & rule to show Cause re restraint.

July 2. Order apptg. Hiram Steelman, Atl. City, Trustee (6-25-36) Trustee's Bond.
Order Approving Trustee's Bond.

7. Order continuing rule & restraint to Sept. 11/36.
Affidavit of Samuel B. Stewart, Jr., in opposition to Pet. for stay.
Affidavit of Geo. Frankenthaler, appearing Specially to contest the Jurisdiction of the Court.

8. Pet. & Order of Restraint.

Aug. 27. Certificate of Referee on Petition for Review.

[fol. 2]

Sept. 4. Petition for stay.
Order allowing stay of Referee's order.

9. Referee's Certificate for Contempt.
Testimony (2 books).

11. Affidavit of George Frankenthaler.
Affidavit of Sam'l B. Stewart, Jr., in opposition to Petition for stay.

14. Petition & Rule to show cause re contempt of Eva Fox.

15. Supplemental Affidavit in support and Rule to show cause.

22. Minutes.
Petition for Restraint.
Affidavit of Service.
" " Eva Fox.
Order To show cause re restraint.

DOCKET ENTRIES—Continued

1936.

Sept. 25. Creditors' Petition for Examination of Witnesses.
Order for Examination of Witnesses.
Proof of Service.
Notice to Dismiss Trustee's Petition for Stay.
Order re restraint.

Oct. 2. Memorandum (Avis).
" "
7. Order To Restrain.
9. Notice of Application to settle form of Order of Affirmance.
Order of Affirmance.
Proof of Service of Order of restraint.
15. Assignment of Errors.
Petition on Appeal of All Continent Corporation, a corp., & Eva Fox.
Order allowing appeal of All Continent Corporation, a corp., & Eva Fox & Supersedeas.

[fol. 3]

Bond.
Citation issued.
20. Assignment of Error on appeal by All Continent Corp.
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Bond for Costs on Appeal of All Continent Corp.
Citation issued.
21. Præcipe for Printing Record.

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IN UNITED STATES DISTRICT COURT

2. PETITION

To the Honorable, the Judges of the United States District Court, for the District of New Jersey:

The petition of Hiram Steelman, Trustee in Bankruptcy for William Fox, bankrupt, respectfully shows:

1. That William Fox, the above named bankrupt, was adjudicated a bankrupt by order of this Court on May 29, 1936.

2. Thereafter, on June 25, 1936, Hiram Steelman, petitioner herein, was appointed trustee of said bankrupt and his estate by Honorable Robert E. Steedle, Referee in Bankruptcy, to whom this matter was referred, and said petitioner promptly thereafter duly qualified as such Trustee and thereby became entitled to receive into his possession all of the assets of said bankrupt.

[fol. 4] 3. That thereafter upon the petition of the Capital Company and Chicago Title and Trust Company, two of the creditors of said bankrupt, it was ordered that All Continent Corporation, a corporation of the State of Delaware, Eva Fox, the wife of the bankrupt, Belle Fox and Mona Fox, both daughters of the bankrupt, Herbert Leitstein and Joseph Hart should be examined under Section 21-a of the Bankruptcy Act of 1898. Said order directing said examination was entered herein on June 23, 1936.

4. In pursuance of said order directing said examination subpœnas were issued out of this Court directing all of said parties named in said order to appear before the aforesaid Referee for examination and requiring them to produce certain books and records. All of said subpœnas were duly served upon said parties.

5. Said examination by virtue of said order began on July 6, 1936, and has continued to be conducted on the following dates, to wit: July 6, 7, 8, 9, 14, 15, 16, 21, 22, 23, 28, 29, 30, August 4, 5, 6, 12, 18, 19, 20, 25, 26, September 1 and 2, 1936.

6. Said petitioner as Trustee in bankruptcy for the above named bankrupt is charged with the duty and obligation of discovering and acquiring possession of all of the property and assets of said bankrupt, and in pursuance of his duty and obligation in that respect he is interested in the progress of said examination and any benefit that might result therefrom. He has been personally present during most of the time that examination of witnesses has taken place by virtue of the aforesaid order, and at times when petitioner has not been present at said examinations, he

[fol. 5] has been represented at said examinations by his attorney duly appointed.

7. The aforesaid examination is being conducted for the purpose of inquiring into the acts, conduct and property of the bankrupt. Said examination has not been completed. For the most part said examination has been conducted for the purpose of inquiring into the acts and conduct of the bankrupt in connection with numerous transactions which said bankrupt had with said All Continent Corporation.

8. As a result of information and facts which came to the petitioner herein as result of disclosures made during said examination, petitioner herein made application to said Referee in Bankruptcy to compel All Continent Corporation to turn over its books and records to petitioner herein, as Trustee for said bankrupt, for complete examination and audit for the purpose of ascertaining such information as is therein contained respecting the acts, conduct and property of the bankrupt. As a result of said proceedings had before said referee, he, the said referee, filed conclusions herein in which the facts and circumstances respecting the transactions which had theretofore taken place between said All Continent Corporation and said bankrupt were summarized as follows:

"The All Continent Corporation, whose books and records are here sought to be examined, was the creation of the bankrupt himself; every dollar of its capital came from the bankrupt; by the formation of the corporation, he divested himself of a very substantial portion of his property; all of its capital stock, now allegedly owned by the wife of the bankrupt, has never been transferred upon the [fol. 6] books of the corporation, and the bankrupt still appears as the record holder thereof; from the time of the formation of the corporation, the bankrupt retained in his possession and under his control, the securities forming the assets of the corporation; in numerous instances, the bankrupt dealt with the assets of corporation as his own; the bankrupt from the time of the formation of the corporation, had power of attorney to act for it with extremely broad powers; the bankrupt was undoubtedly the guiding spirit in all of the affairs of the corporation throughout its entire corporate existence; the books and records already in evidence disclose that the corporation made disburse-

ments for the account of the bankrupt and various corporations owned by him, and that the major portion of the transactions of the corporation were transactions of this type, or transactions in which the bankrupt or the corporations which he owned, were involved; the books and records of the All Continent Corporation are not in accord with the bankrupt's books and records; notes given by the bankrupt to the All Continent Corporation have been foreclosed by sale of additional assets of the bankrupt a few months prior to the bankruptcy; other assets were sold by the bankrupt to the corporation just prior to his bankruptcy; the frequent occurrence of erasures, corrections, and interlineations, in the books of the All Continent Corporation, in most instances, apparently in transactions involving the bankrupt; this chain of facts and circumstances and many others in the record of testimony already adduced, demonstrate clearly that the affairs of the All Continent Corporation were so related to and intertwined with the property and affairs of the bankrupt as to render absolutely necessary to the proper administration of the estate of the bankrupt a complete and thorough examination and audit by the Trustee of the books and records of the All Continent Corporation."

[fol. 7] 9. As a result of the conclusion and findings of said referee in the proceedings instituted by petitioner herein as aforesaid, he, the said referee, entered an order in this cause on August 18, 1936, whereby it was ordered that said All Continent Corporation and its officers, agents and employees were directed to forthwith deliver to petitioner herein, trustee for the above named bankrupt, "all cash, books, journals, ledgers, transfer ledgers, check books, check stubs, cancelled checks, bank books, bank statements, brokerage statement and contracts (with the exception of current check books) of the All Continent Corporation for the purpose of enabling the said trustee to make a thorough and complete examination and audit thereof to ascertain such facts or information as is therein contained respecting the acts, conduct and property of the bankrupt," said books and records to be so delivered upon conditions set forth in said order.

10. Immediately after the entry of the aforesaid order on August 18, 1936, said All Continent Corporation filed its

petition in this court for the purpose of reviewing said order of said referee, and in said petition it is averred that said order is erroneous because among other things it is alleged that said All Continent Corporation is a separate entity, apart from the bankrupt herein, and that the effect of said order was to determine that said All Continent Corporation and said bankrupt were in fact one and the same, so that the direction to turn said books over to petitioner, the said trustee, was to direct that they be so turned over as the books of said bankrupt, all of which was not justified in fact and was against the weight of the evidence then before the court as the result of said 21-a examination.

[fol. 8] 11. In conjunction with said petition to review, said All Continent Corporation also applied to this court by petition for an order to stay the operation of said order made by said referee on August 18, 1936, as aforesaid, until the legality thereof was determined by this court under the aforesaid petition to review. Accordingly, this court did enter order herein on August 21, 1936, staying the mandate of said order and directing hearing on said petition to review on September 9, 1936. Hearing on said petition to review was duly had on said date last mentioned above and the determination of the questions there involved are still pending before this court undetermined.

12. During the progress of the said Section 21-a examination, said Eva Fox was called for examination. Said Eva Fox is now and for some time has been the president of All Continent Corporation. As a result of the refusal of the said Eva Fox to submit to examination concerning the affairs of said All Continent Corporation and particularly the acts and conduct of the above named bankrupt with it, the aforesaid referee in bankruptcy has cited said Eva Fox to this court for contempt. Petitioner herein has joined with the Capital Company and Chicago Title and Trust Company, creditors on whose application said examination is being conducted, in filing petition with this court praying that said Eva Fox be adjudged in contempt for her refusal to testify and said contempt proceedings are now pending before this court.

13. On September 9, 1936, petitioner herein was served with subpœna in Equity issued out of the United States District Court for the Eastern District of Pennsylvania,

[fol. 9] together with copy of bill of complaint filed in said court in a certain suit instituted by All Continent Corporation against John S. Wynn, James H. Wynn, Harold A. Longwell, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice Wynn and James A. Longwell, co-partners trading under the firm name of J. W. Sparks & Company, Capital Company and Hiram Steelman, Trustee of the Estate of William Fox, a bankrupt, copies of which subpœna and bill of complaint are attached hereto, marked Exhibits "A" and "B" and by this reference made a part hereof.

14. On September 18, 1936, petitioner herein was served with a copy of an order to plead entered in the aforesaid suit pending in the said United States District Court for the Eastern District of Pennsylvania, and a copy of said order to plead is attached hereto, marked Exhibit "C" and by this reference is made a part hereof.

15. By virtue of the proceedings last mentioned above, said All Continent Corporation is endeavoring to force the trial of the issue of the ownership of property standing in its name concerning the real, true and bona fide ownership of which examination and investigation is now being made in orderly procedure under said Section 21-a of said Bankruptcy Act, by virtue of permission and leave granted by said order entered in this cause as aforesaid. To permit said All Continent Corporation to proceed with said litigation before said investigation and examination under Section 21-a of said Bankruptcy Act is concluded would require petitioner herein to enter upon the trial of the ques-[fol. 10] tion of the ownership of the property and assets mentioned in said bill of complaint, copy of which is attached hereto, without such knowledge and information as might be gleaned from the orderly continuance of said 21-a examination and a complete examination and audit of the books of All Continent Corporation. From the facts and information which has come to the knowledge of the petitioner, he is strongly of the belief and opinion that All Continent Corporation and the bankrupt, William Fox, are one and the same, and he confidently believes that if the examination and investigation which is now being conducted under said Section 21-a of the Bankruptcy Act, as aforesaid,

is permitted to proceed unhampered and unobstructed by the unlawful and improper acts and conduct of those persons subpœned to appear before this Court for examination, then it will be definitely and conclusively determined that said All Continent Corporation and said bankrupt William Fox are one and the same.

16. By means of the institution of its said suit in said Eastern District of Pennsylvania, said All Continent Corporation is endeavoring to hinder, impede, harass, obstruct and prevent the orderly, proper and legal administration of the affairs of this bankrupt estate, and particularly the efforts and activities of the petitioner herein, the trustee for said bankrupt, in his efforts and activities looking toward the discovery and acquisition of assets in said estate, and to permit All Continent Corporation to continue with the prosecution of its said litigation in said Eastern District of Pennsylvania would result in great and irreparable damage to this estate and all parties interested therein, and also it might result in All Continent Corporation acquiring unfair, unreasonable and unjust advantage over petitioner [fol. 11] in the management and administration of the affairs of this estate.

17. Said All Continent Corporation has entered its appearance in this cause and has filed claim for moneys claimed to be due it from said bankrupt, William Fox. Said All Continent Corporation at the present time is maintaining its only business office in the City of Atlantic City, Atlantic County, New Jersey, where it keeps all of its said books of account, records, etc., and the same are there in charge of Herbert Leitstein, who is one of the persons at present under examination in pursuance of the order entered in this cause by virtue of said Section 21-a of said Bankruptcy Act as aforesaid.

18. By the schedules which were filed herein by said bankrupt he claims to have liabilities amounting to $9,535,261.91 and assets amounting to $1,590,100.00. Of the total of said assets only the sum of $100.00 was in cash, although said schedules disclose that said bankrupt at or about the time of filing his petition for adjudication paid to his attorneys, fees aggregating the sum of $7500.00 in cash. Among the other assets listed in said bankruptcy schedules your petitioner has been unable thus far to find

anything of value which might be converted into cash. Since the filing of said petition in bankruptcy and the schedules affixed thereto, said bankrupt has delivered to petitioner certain certificates of credit of deposits in banks of Germany and Austria, alleging that they have immediate cash value. Inquiry by this petitioner has disclosed the fact that said certificates of deposit have little if any value, and whatever value said certificates do have would in all probability not be turned over to petitioner for use out-
[fol. 12] side the boundary limits of said countries. There are, therefore, no funds in the hands of trustee herein with which he can adequately and properly defend said litigation pending in said United States District Court for the Eastern District of Pennsylvania, and to be compelled to defend said pending suit in that district would result in great disadvantage and might cause great loss and damage to this bankrupt estate.

Your petitioner therefore prays:

1. That this by its order or decree enjoin and restrain said All Continent Corporation, its officers, servants, agents and attorneys from proceeding with or further prosecuting its said action instituted by it in the United States District Court for the Eastern District of Pennsylvania until the further order of this Court; and

2. That petitioner herein shall have such other general relief as may be deemed just and proper under the circumstances the premises considered.

Wm. Elmer Brown, Jr., Attorney for Hiram Steelman, Trustee for William Fox, Bankrupt.

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AFFIDAVIT OF HIRAM STEELMAN

STATE OF NEW JERSEY,
County of Atlantic, ss:

Hiram Steelman, being duly sworn according to law, on his oath deposes and says:

1. That William Fox, the above named bankrupt, was adjudicated a bankrupt by order of this Court on May 29, 1936.

[fol. 13] 2. Thereafter, on June 25, 1936, I was appointed trustee of said bankrupt and his estate by Honorable Robert E. Steedle, Referee in Bankruptcy, to whom this matter was referred, and promptly thereafter duly qualified as such Trustee and thereby became entitled to receive into my possession all of the assets of said bankrupt.

3. That thereafter upon the petition of the Capital Company and Chicago Title and Trust Company, two of the creditors of said bankrupt, it was ordered that All Continent Corporation, a corporation of the State of Delaware, Eva Fox, the wife of the bankrupt, Belle Fox and Mona Fox, both daughters of the bankrupt, Herbert Leitstein and Joseph Hart should be examined under Section 21-a of the Bankruptcy Act of 1898. Said order directing said examination was entered herein on June 23, 1936.

4. In pursuance of said order directing said examination subpoenas were issued out of this Court directing all of said parties named in said order to appear before the aforesaid Referee for examination and requiring them to produce certain books and records. All of said subpoenas were duly served upon said parties.

5. Said examination by virtue of said order began on July 6, 1936, and has continued to be conducted on the following dates, to wit: July 6, 7, 8, 9, 14, 15, 16, 21, 22, 23, 28, 29, 30, August 4, 5, 6, 12, 18, 19, 20, 25, 26, September 1 and 2, 1936.

6. As Trustee in bankruptcy for the above named bankrupt, I am charged with the duty and obligation of discovering and acquiring possession of all of the property and [fol. 14] assets of said bankrupt, and in pursuance of my duty and obligation in that respect I am interested in the progress of said examination and any benefit that might result therefrom. I have been personally present during most of the time that examination of witnesses has taken place by virtue of the aforesaid order, and at times when not present at said examinations, have been represented at said examinations by my attorney duly appointed.

7. The aforesaid examination is being conducted for the purpose of inquiring into the acts, conduct and property of the bankrupt. Said examination has not been completed. For the most part said examination has been conducted for

the purpose of inquiring into the acts and conduct of the bankrupt in connection with numerous transactions which said bankrupt had with said All Continent Corporation.

8. As a result of information and facts which came to me as result of disclosures made during said examination, I made application to said Referee in Bankruptcy to compel All Continent Corporation to turn over its books and records to me, as Trustee for said bankrupt, for complete examination and audit for the purpose of ascertaining such information as is therein contained respecting the acts, conduct and property of the bankrupt. As a result of said proceedings had before said referee, he, the said referee, filed conclusions herein in which the facts and circumstances respecting the transactions which had heretofore taken place between said All Continent Corporation and said bankrupt were summarized as follows:

"The All Continent Corporation, whose books and records are here sought to be examined, was the creation of [fol. 15] the bankrupt himself; every dollar of its capital came from the bankrupt; by the formation of the corporation, he divested himself of a very substantial portion of his property; all of its capital stock, now allegedly owned by the wife of the bankrupt, has never been transferred upon the books of the corporation, and the bankrupt still appears as the record holder thereof; from the time of the formation of the corporation, the bankrupt retained in his possession and under his control, the securities forming the assets of the corporation; in numerous instances, the bankrupt dealt with the assets of corporation as his own; the bankrupt from the time of the formation of the corporation, had power of attorney to act for it with extremely broad powers; the bankrupt was undoubtedly the guiding spirit in all of the affairs of the corporation throughout its entire corporate existence; the books and records already in evidence disclose that the corporation made disbursements for the account of the bankrupt and various corporations owned by him, and that the major portion of the transactions of the corporation were transactions of this type, or transactions in which the bankrupt or the corporations which he owned, were involved; the books and records of the All Continent Corporation are not in accord with the bankrupt's books and records; notes given by the bankrupt to the All Continent Corporation have been fore-

closed by sale of additional assets of the bankrupt a few months prior to the bankruptcy; other assets were sold by the bankrupt to the corporation just prior to his bankruptcy; the frequent occurrence of erasures, corrections, and interlineations, in the books of the All Continent Corporation, in most instances, apparently in transactions involving the bankrupt; this chain of facts and circumstances and many others in the record of testimony already adduced, demonstrate clearly that the affairs of the All Con- [fol. 16] tinent Corporation were so related to and intertwined with the property and affairs of the bankrupt as to render absolutely necessary to the proper administration of the estate of the bankrupt a complete and thorough examination and audit by the Trustee of the books and records of the All Continent Corporation."

9. As a result of the conclusions and findings of said referee in the proceedings instituted herein as aforesaid, he, the said referee, entered an order in this cause on August 18, 1936, whereby it was ordered that said All Continent Corporation and its officers, agents and employees were directed to forthwith deliver to me, as trustee for the above named bankrupt, "all cash books, journals, ledgers, transfer ledgers, check books, check stubs, cancelled checks, bank books, bank statements, brokerage statements and contracts (with the exception of current check books), of the All Continent Corporation for the purpose of enabling me to make a thorough and complete examination and audit thereof to ascertain such facts or information as is therein contained respecting the acts, conduct and property of the bankrupt," said books and records to be so delivered upon conditions set forth in said order.

10. Immediately after the entry of the aforesaid order on August 18, 1936, said All Continent Corporation filed its petition in this court for the purpose of reviewing said order of said referee, and in said petition it is averred that said order is erroneous because among other things it is alleged that said All Continent Corporation is a separate entity, apart from the bankrupt herein, and that the effect of said order was to determine that said All Continent Corporation and said bankrupt were in fact one and the same, [fol. 17] so that the direction to turn said books over to me, as said trustee, was to direct that they be so turned

over as the books of said bankrupt, all of which was not justified in fact and was against the weight of the evidence then before the court as the result of said 21-a examination.

11. In conjunction with said petition to review, said All Continent Corporation also applied to this Court by petition for an order to stay the operation of said order made by said referee on August 18, 1936, as aforesaid, until the legality thereof was determined by this court under the aforesaid petition to review. Accordingly, this court did enter order herein on August 21, 1936, staying the mandate of said order and directing hearing on said petition to review on September 9, 1936. Hearing on said petition to review was duly had on said date last mentioned above and the determination of the questions there involved are still pending before this court undetermined.

12. During the progress of the said Section 21-a examination, said Eva Fox was called for examination. Said Eva Fox is now and for some time has been the president of All Continent Corporation. As a result of the refusal of the said Eva Fox to submit to examination concerning the affairs of said All Continent Corporation and particularly the acts and conduct of the above named bankrupt with it, the aforesaid referee in bankruptcy has cited said Eva Fox to this court for contempt. I have joined with the Capital Company and Chicago Title and Trust Company, creditors on whose application said examination is being conducted, in filing petition with this court praying that said Eva Fox be adjudged in contempt for her refusal to [fol. 18] testify and said contempt proceedings are now pending before this court.

13. On September 9, 1936, I was served with subpoena in Equity issued out of the United States District Court for the Eastern District of Pennsylvania, together with copy of bill of complaint filed in said court in a certain suit instituted by All Continent Corporation against John S. Wynn, James H. Wynn, Harold A. Longwell, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice Wynn and James A. Longwell, co-partners trading under the firm name of J. W. Sparks & Company, Capital Company and Hiram Steelman, Trustee of the Estate of William Fox, a bankrupt, copies of which subpoena and bill of complaint

are attached hereto marked Exhibits "A" and "B" and by this reference made a part hereof.

14. On September 18, 1936, I was served with a copy of an order to plead entered in the aforesaid suit pending in the said United States District Court for the Eastern District of Pennsylvania, and a copy of said order to plead is attached hereto, marked Exhibit "C" and by this reference is made a part hereof.

15. By virtue of the proceedings last mentioned above, said All Continent Corporation is endeavoring to force the trial of the issue of the ownership of property standing in its name concerning the real, true and bona fide ownership of which examination and investigation is now being made in orderly procedure under said Section 21-a of said Bankruptcy Act, by virtue of permission and leave granted by [fol. 19] said order entered in this cause, as aforesaid. To permit said All Continent Corporation to proceed with said litigation before said investigation and examination under Section 21-a of said Bankruptcy Act is concluded would require me to enter upon the trial of the question of the ownership of the property and assets mentioned in said bill of complaint, copy of which is attached hereto, without such knowledge and information as might be gleaned from the orderly continuance of said 21-a examination and a complete examination and audit of the books of All Continent Corporation. From the facts and information which has come to my knowledge, I am strongly of the belief and opinion that All Continent Corporation and the bankrupt, William Fox, are one and the same, and I confidently believe that if the examination and investigation which is now being conducted under Section 21-a of the Bankruptcy Act, as aforesaid, is permitted to proceed unhampered and unobstructed by the unlawful and improper acts and conduct of those persons subpoenaed to appear before this Court for examination, then it will be definitely and conclusively determined that said All Continent Corporation and said bankrupt William Fox are one and the same.

16. By means of the institution of its said suit in said Eastern District of Pennsylvania, said All Continent Corporation is endeavoring to hinder, impede, harass, obstruct and prevent the orderly, proper and legal administration of

the affairs of this bankrupt estate, and particularly my efforts and activities herein, as trustee for said bankrupt, in my efforts and activities looking toward the discovery and acquisition of assets in said estate, and to permit All Continent Corporation to continue with the prosecution of [fol. 20] its said litigation in said Eastern District of Pennsylvania would result in great and irreparable damage to this estate and all parties interested therein, and also it might result in All Continent Corporation acquiring unfair, unreasonable and unjust advantage over the trustee herein in the management and administration of the affairs of this estate.

17. Said All Continent Corporation has entered its appearance in this cause and has filed claim for moneys claimed to be due it from said bankrupt, William Fox. Said All Continent Corporation at the present time is maintaining its only business office in the City of Atlantic City, Atlantic County, New Jersey, where it keeps all of its said books of account, records, etc., and the same are there in charge of Herbert Leitstein, who is one of the persons at present under examination in pursuance of the order entered in this cause by virtue of said Section 21-a of said Bankruptcy Act as aforesaid.

18. By the schedules which were filed herein by said bankrupt he claims to have liabilities amounting to $9,535,-261.91 and assets amounting to $1,590,100.00. Of the total of said assets only the sum of $100.00 was in cash, although said schedules disclose that said bankrupt at or about the time of filing his petition for adjudication paid to his attorneys fees aggregating the sum of $7500.00 in cash. Among the other assets listed in said bankruptcy schedules I have been unable thus far to find anything of value which might be converted into cash. Since the filing of said petition in bankruptcy and the schedules affixed thereto, said bankrupt has delivered to me certain certificates of credit of deposits in banks of Germany and Austria, alleging that they have [fol. 21] immediate cash value. Inquiry by me has disclosed the fact that said certificates of deposit have little if any value, and whatever value said certificates do have would in all probability not be turned over to me for use outside the boundary limits of said countries. There are, therefore, no funds in my hands, as trustee, with which I

can adequately and properly defend said litigation pending in said United States District Court for the Eastern District of Pennsylvania, and to be compelled to defend said pending suit in that district would result in great disadvantage and might cause great loss and damage to this bankrupt estate.

Hiram Steelman.

Sworn and subscribed to before me this 21st day of September, 1936. Edna C. Heller, Notary Public of New Jersey. My Commission Expires Jan. 13, 1941.

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EXHIBIT "A" TO AFFIDAVIT

Subpœna in Equity.

UNITED STATES DISTRICT COURT——DIVISION, EASTERN DISTRICT OF PENNSYLVANIA

The President of the United States of America to John S. Wynn, James H. Wynn, Harold A. Longwell, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice [fol. 22] Wynn, and James A. Longwell, Copartners trdg. under the firm name of J. W. Sparks & Co. Capital Company and Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt.

You are hereby commanded that all excuses and delays set aside you be and appear within twenty days after the service of this subpœna at the Clerk's Office of the United States District Court for the Eastern District of Pennsylvania, at Philadelphia, the 28th of September, to answer unto the—bill of complaint of All Continent Corporation in said Court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable United States District Judge at Philadelphia, this 8th day of September, A. D. 1936.

George Brodbeck, Clerk, by E. G. Johnson, Deputy Clerk.

Memorandum

The Defendants in this case are required to file an answer or other defense in the Clerk's office of said Court,

on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso.

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[fol. 23] EXHIBIT "B" TO AFFIDAVIT

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA, JUNE TERM, 1936

In Equity

No. 9533

ALL CONTINENT CORPORATION, Plaintiff,

v.

JOHN S. WYNN, JAMES H. WYNN, HAROLD A. LONGWELL, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice Wynn and James A. Longwell, Copartners trading under the firm name of J. W. Sparks & Company; Capital Company, and Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt, Defendants

Bill of Complaint

To the Honorable, the Judges of the United States District Court for the Eastern District of Pennsylvania:

Plaintiff, All Continent Corporation, files this Bill of Complaint against the above named defendants and says:

[fol. 24] 1. Plaintiff, All Continent Corporation, is a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in that State, in the City of Wilmington and County of New Castle. It is a citizen and resident of the State of Delaware and of the District of Delaware.

2. The defendant John S. Wynn is a citizen of the State of Pennsylvania, and a resident and inhabitant of Merion, in the County of Montgomery, Pennsylvania, and of the Eastern District of Pennsylvania; the defendant James H. Wynn is a citizen of the State of Pennsylvania and a resident and inhabitant of Haverford Township, Montgomery

County, Pennsylvania, and of the Eastern District of Pennsylvania; the defendant Harold A. Longwell is a citizen of the State of New Jersey, and resident and inhabitant of Ridgewood, New Jersey, and of the District of New Jersey; the defendant E. Schuyler Jackson, Jr., is a citizen of the State of New York, and a resident and inhabitant of Bronxville, in the State of New York, and of the District of New York; the defendant Russell R. Hires is a citizen of the State of New Jersey, and a resident and inhabitant of Alloway, New Jersey, and of the District of New Jersey; the defendant Archibald W. Austin is a citizen of the State of New Jersey, and a resident and inhabitant of Vineland, in the State of New Jersey, and of the District of New Jersey; the defendant James B. Borden is a citizen of the State of Pennsylvania, and a resident and inhabitant of the City of Philadelphia, in the County of Philadelphia Pennsylvania, and of the Eastern District of Pennsylvania; the defendant Frederick W. Winterberg is a citizen of the State of New York, and a resident and inhabitant of Brooklyn, in the [fol. 25] County of Brooklyn, State of New York, and of the Eastern District of New York; the defendant J. Maurice Wynn is a citizen of the State of Pennsylvania, and a resident and inhabitant of Wayne, in the County of Montgomery and State of Pennsylvania, and of the Eastern District of Pennsylvania; and the defendant James A. Longwell is a citizen of the State of Pennsylvania, and a resident and inhabitant of the City of Philadelphia, County of Philadelphia, in the State of Pennsylvania, and of the Eastern District of Pennsylvania. They are co-partners trading under the name of J. W. Sparks & Company, which partnership has its principal place of business in the City of Philadelphia, in the Eastern District of Pennsylvania. They are engaged in the stock brokerage and investment business.

3. Defendant Capital Company is a corporation organized and existing under the laws of the State of California, having its principal place of business in the City of San Francisco, California. It is a citizen and resident of the State of California.

4. Defendant Hiram Steelman is a citizen of the State of New Jersey, residing at Atlantic City, in that State. He was on the 25th day of June, 1936, appointed Trustee in Bankruptcy in the matter of William Fox, Bankrupt, by

the District Court for the District of New Jersey, No. 3033, In Bankruptcy, 1936.

5. The ground upon which the jurisdiction of this Court depends is the diversity of citizenship between plaintiff and each and all of the defendants. Relief is sought to remove a cloud from certain property of the plaintiff located within [fol. 26] the Eastern District of Pennsylvania and hereafter described, under Section 57 of the Judicial Code, 28 U. S. C. A., Section 118.

6. The matter in controversy exceeds the sum of $3,000 exclusive of interest and costs.

7. On or about January 30, 1936, plaintiff opened an account with the Philadelphia office of J. W. Sparks & Company and at that time delivered to J. W. Sparks & Company, in the City of Philadelphia, certain securities. J. W. Sparks & Company among other things thereupon agreed orally with plaintiff to keep said securities safely in the City of Philadelphia for and on behalf of plaintiff, to make delivery of the same or any part thereof at the order and direction of the plaintiff, and to receive for and on behalf of plaintiff such additional securities as plaintiff might from time to time purchase and direct to be delivered to J. W. Sparks & Company.

8. Between January 30, 1936, and on or about March 27, 1936, plaintiff sold certain securities held by J. W. Sparks & Company in the said account, and caused other securities to be purchased and delivered to J. W. Sparks & Company to be held for its account. Since January, 1936, J. W. Sparks & Company has also collected certain dividends and interest for the account of plaintiff.

9. A true and correct statement of the account between J. W. Sparks & Company and plaintiff and of the securities held by the former for the latter as of August 31, 1936, is attached hereto, made part hereof, and marked Exhibit "A". The approximate value of the securities held in such account is in excess of $500,000. Said securities are physi- [fol. 27] cally located in the possession of J. W. Sparks & Company in the City of Philadelphia, in the Eastern District of Pennsylvania, and constitute personal property of the plaintiff within this District.

10. On July 18, 1935, defendant Capital Company, upon a written confession of judgment, entered a judgment

against one William Fox, in the United States District Court for the Southern District of New York, in the sum of $297,412.91.

11. On March 27, 1936, Capital Company, by its attorney, served upon J. W. Sparks & Company subpoena for examination of third parties in proceedings supplemental to judgment, purporting to be issued under the authority of Section 779(2) of the Civil Practice Act, New York. A true and correct copy of this subpoena is attached hereto, made part hereof, and marked Exhibit "B". This su-pœna will hereafter be referred to as the "third-party subpoena". Said third-party subpoena required J. W. Sparks & Company to be examined concerning property of the judgment debtor held either in his name or in the name, among others, of All Continent Corporation.

12. As will be noted by reference to the third-party subpoena, there is endorsed thereon a copy of Section 781 of the Civil Practice Act of New York, which provides in part that "The third person • • • is forbidden to transfer • • • property belonging to the judgment debtor • • • until further order of the Court", and that anyone who violates "the provisions of such restraining provision shall be subject to punishment by the Court by fine or imprisonment, or either, as and for a contempt."

[fol. 28] 13. J. W. Sparks & Company thereupon moved to vacate the third-party subpoena, averring that it had never had an account with William Fox or with any other party named in the subpoena, except All Continent Corporation. This motion to vacate was denied by order of the District Court for the Southern District of New York, dated April 29, 1936, and on appeal said order was affirmed by the Circuit Court of Appeals for the Second Circuit, in an opinion handed down August 6, 1936. It was not decided in these proceedings that J. W. Sparks & Company held any property of the judgment debtor, or that the account of All Continent Corporation or any part of it was in fact the property of the judgment debtor. It was, however, judicially established by these proceedings that the subpœna itself was valid, and constituted an effective injunction against the transfer by J. W. Sparks & Company of any property which should ultimately be determined to be that

of the judgment debtor, as appears from the following excerpt from the opinion:

"The next objection is that §781 of the Civil Practice Act is unconstitutional in imposing an injunction without a judge's order. If the statute affected to declare in advance of a hearing that the plaintiff's attorney might forbid the 'third party's' transfer of any specific property under pain of contempt, there would indeed be much to say for that argument. It does not do so; it measures the extent of the prohibition by the judgment debtor's ownership of the property; the 'third party' is forbidden to transfer only what property he owns, and cannot be punished without proof that any property thereafter transferred was the debtor's in fact. The statute therefore does no more than declare it unlawful to transfer a judgment debtor's property after notice and impose the penalty of contempt for disobedience. It anticipates no judicial decision; it merely [fol. 29] creates a new class of unlawful acts, as statutes have done from time immemorial. We are not to be deceived by the fact that the command of the statute is called an injunction, or that it is punished by a court, not by trial with jury."

14. Said injunction is at the present time still in full force and effect in so far as it prohibits J. W. Sparks & Company, under pain of punishment for contempt, from transferring or disposing of the account of All Continent Corporation or any of the securities contained therein should such account or securities at any time be determined to be the property of William Fox.

15. In the proceedings upon the motion to vacate the third-party subpœna issued to J. W. Sparks & Company, there were filed affidavits on behalf of defendant Capital Company averring that the latter had reason to believe the securities in the account of All Continent Corporation were in fact the property of William Fox; and defendant Capital Company has consistently claimed that the securities in the said account are in fact the property of William Fox, and not that of plaintiff.

16. Subsequent to the adjudication of William Fox as a bankrupt, defendant Hiram Steelman appeared before the District Court for the District of New Jersey and joined

in an application to have the third-party subpœna proceedings and the injunction contained in the said third-party subpoena continued, notwithstanding the pendency of the bankruptcy proceedings, as a result of which the District Court granted such application and permitted the said third-party subpoena proceedings and the injunction con-
[fol. 30] tained therein to continue; and since the date of his appointment as such Trustee has ratified and approved in all respects the procedure followed by the Capital Company, as aforesaid, with reference to the said third-party subpoena and the injunction contained therein.

17. The securities in the aforesaid account of All Continent Corporation with the said J. W. Sparks & Company were not at any time and are not now the property of the said William Fox, judgment debtor, but on the contrary are now and at all times were the property of the plaintiff.

18. Plaintiff has tendered to J. W. Sparks & Company the amount of its debit balance and has demanded delivery of the securities owned by it and held in its account with J. W. Sparks & Company. J. W. Sparks & Company has refused and still does refuse to turn over to plaintiff the securities in the aforesaid account of All Continent Corporation with J. W. Sparks & Company. J. W. Sparks & Company bases this refusal upon the fear of contempt proceedings if the securities in the account should ever be established to be in fact the property of William Fox and not of the plaintiff, since the burden of determining whether the securities in the said account do or do not in fact belong to William Fox is placed by the third-party subpoena proceedings upon J. W. Sparks & Company.

19. Plaintiff is advised, believes and therefore avers that the third-party subpoena issued on behalf of defendant Capital Company, together with the accompanying restraint against transfer of any property belonging to William Fox, and the claim of Capital Company that the account of plaintiff is in fact the property of William Fox, constitute an en-
[fol. 31] cumbrance and cloud upon the title of plaintiff to the securities in its account with J. W. Sparks & Company; and that defendant Hiram Steelman, by joining in the application for continuance of the third-party subpoena proceedings and the injunction against J. W. Sparks & Com-

pany, has joined with defendant Capital Company in preserving such cloud upon plaintiff's title.

20. Plaintiff is further advised, believes and therefore avers, that it is without adequate remedy at law and will suffer irreparable damage if the relief here prayed for is not granted. It is advised, believes and therefore avers, that action by defendant Hiram Steelman, as Trustee in Bankruptcy, to reach the securities in the account with J. W. Sparks & Company must be by plenary suit and that action by defendant Capital Company to reach such securities must be by independent bill in equity; that plaintiff should not be required to await the bringing of these suits at the pleasure of the several defendants; and that an action at law to recover the securities or damages for the retention thereof would not do complete equity among the parties.

Wherefore, plaintiff prays:

(a) That this Court make an order directing those defendants who are not inhabitants of or found within the Eastern District of Pennsylvania to appear, plead, answer or demur, upon a day to be designated by this Court.

(b) That this Court enter a decree removing the cloud from the securities held by J. W. Sparks & Company and declaring them to be the property of plaintiff.

(c) That this Court, by way of further relief, decree that [fol. 32] upon payment of the debit balance of plaintiff, J. W. Sparks & Company deliver to plaintiff all securities owned by plaintiff.

(d) Such other and further relief as may seem proper.

Pepper, Bodine, Stokes & Schoch, Attorneys for Plaintiff.

*Duly sworn to by Belle Fox. Jurat omitted in printing.*

[fol. 33] EXHIBIT "A" TO BILL OF COMPLAINT

All Continent Corp., c/o Eva Fox, Hotel Claridge, Atlantic City, N. J.
In Account with J. W. Sparks & Co., 1510 Chesnut Street, Philadelphia

| Date | Securities Bought or Received | Sold or Delivered | Description | Price | Amount Debit | Credit | Balance |
|---|---|---|---|---|---|---|---|
| | | | Balance | | | | |
| | | | Securities | | | | |
| Jul. 31 36 | 500 | | Savoy Oil | | | | 307,376.86 |
| | 5100 | | I R T | | | | |
| | 100 | | Bankers Sec. Com | | | | |
| | 5600 | | Radio | | | | |
| | 500 | | MKT | | | | |
| | 500 | | Yellow Truck | | | | |
| | 1500 | | Genl Realty | | | | |
| | 500 | | Ohio Oil | | | | |
| | 6800 | | Warner Pict | | | | |
| | 2300 | | Mid States Pete B V T C | | | | |
| | 1200 | | White Sew Machine | | | | |
| | 400 | | Celotex | | | | |
| | 1400 | | Amer Chain | | | | |
| | 1000 | | Loft Inc | | | | |
| | 200 | | Atl Coast Line | | | | |
| | 500 | | Amer Water Wks | | | | |
| | 500 | | Nor Amer Co | | | | |
| | 100 | | Col G & E | | | | |
| | 300 | | H. L. Green | | | | |
| | 700 | | Pierce Oil Pfd | | | | |
| | 7400 | | Houston Oil | | | | |
| | 500 | | Beth Steel | | | | |
| | 300 | | U S Ind Alcohol | | | | |
| | 500 | | Cons Oil | | | | |
| | 1000 | | Republic Stl | | | | |
| Aug. 3 36 | | | DIV 300 H. L. Green | | | 75.00 cr | 307,301.86 |
| Aug. 17 36 | | | DIV 500 Cons Oil | | | 75.00— | 307,226.86 |
| Aug. 31 36 | | | 2¼% Int | 727.64 | | | 307,954.50 |

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[fol. 34] EXHIBIT "B" TO BILL OF COMPLAINT

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

In the Matter of SUPPLEMENTARY PROCEEDINGS, CAPITAL COMPANY, a California Corporation, Judgment-Creditor,

against

WILLIAM FOX, Judgment-Debtor

Subpœna for Examination of Third Party

The President of the United States of America to J. W. Sparks & Company, 50 Broadway, New York, N. Y., by any of its partners or officers, Greeting:

Whereas, a judgment in the sum of $297,412.91 was recovered by the Capital Company, a California Corporation,

against William Fox in the United States District Court, Southern District of New York, on July 18, 1935 and entered and docketed in the office of the clerk thereof on said date and the above named third party has a place for the regular transaction of business or resides in the southern district of New York and

Whereas, the undersigned has reason to believe that the said third party has property of the judgment-debtor exceeding $10.00 in value now therefore

[fol. 35] We Command You that all and singular business and excuses being laid aside, you appear in your proper person before one of the judges of the District Court of the United States for the Southern District of New York in the second circuit in room #506, New United States Court House at Foley Square in the Borough of Manhattan, City of New York on March 31, 1936, at 10:30 o'clock in the forenoon of the same day to be examined under oath concerning properties or monies of William Fox, judgment-debtor, in your possession now or at any time since January 1929, held either in his name or in the name of Mrs. William Fox, Eva Fox, Mona Fox, Mona Tauszig, Caroline Leah Tauszig Belle Fox, Isabel Fox, Bella Fox, Bessie Livingston, Ben Leo, Jack G. Leo, J. L. Rubenstein, John Zanft, Herbert Leitstein, Theodore Altman, Adolph Wolf, All Continent Corporation, Park Wood Corporation, Grandeur Inc., Half Grandeur Holding Company, Georgetown Holding Company, Mitchell Camera Company or of any other person or corporation whatsoever and to produce at such examination all books, papers, and records in your possession or control which have or may contain information concerning such properties or monies and for a failure to attend you will be deemed guilty of a contempt of court and liable to punishment.

Witness, Hon. John C. Knox, Judge of the District Court of the United States for the Southern District of New York at the City of New York the twenty-seventh day of March, 1936.

Charles Weiser, Clerk. (Seal.)

[fol. 36] Cravath, deGersdorff, Swaine & Wood, Attorneys for Judgment-Creditor, Office and Post Office Address: 15 Broad Street, New York, N. Y.

Civil Practice Act, Section 781, Transfer of Property by Judgment-Debtor or Third Party Enjoined. Upon the

service of this subpoena upon the judgment-debtor or any third party who has in his or its possession property or monies belonging to the judgment-debtor or claimed by the receiver of the said judgment-debtor, or who is indebted to the judgment-debtor, such judgment-debtor or third person is hereby forbidden to transfer, pay over, or otherwise dispose of such monies or property belonging to the judgment-debtor or thereafter acquired by or becoming due to him, not exempt by law from application to the satisfaction of the judgment until the further order of the court. Any person served with said subpoena who shall violate the provisions of such restraining provision shall be subject to punishment by the court by fine and imprisonment or either as and for a contempt. To effect such restraining provision a copy of this section must be endorsed upon the copy of the subpoena served under this article.

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[fol. 37] EXHIBIT "C" TO AFFIDAVIT

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Equity. No. 9533

June Term, 1936

ALL CONTINENT CORPORATION, Plaintiff,

vs.

JOHN S. WYNN, JAMES H. WYNN, HAROLD A. LONGWELL, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice Wynn and James A. Longwell, Copartners trading under the firm name of J. W. Sparks & Company; Capital Company and Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt, Defendants

Order directing appearance of defendant without the district and directing service of copy of this order and of copy of plaintiff's bill on defendant, wherever found

Upon application of plaintiff's attorneys, it appearing to the undersigned Judge of the United States District Court for the Eastern District of Pennsylvania that this

is a suit commenced to enforce a claim to, and to remove an encumbrance, or lien, or cloud, upon title to, certain [fol. 38] personal property situated within the Eastern District of Pennsylvania, and that the defendant Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt, is not an inhabitant of or to be found within this District, but is a citizen and resident of another State than Pennsylvania, and that he has not voluntarily appeared to this action:

It is ordered that the said defendant Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt, appear, plead, answer or demur to the plaintiff's bill in said suit, in the District Court of the United States for the Eastern District of Pennsylvania, at Philadelphia, by the 28 day of September 1936, in default whereof the Court will proceed to the hearing and adjudication of said suit.

It is further ordered that a copy of this Order and a copy of the plaintiff's bill be personally served on said defendant, wherever found.

Dated this 8th day of September, 1936.

Welsh, United States District Judge.

A true copy certified to from the record.
Attest: Gilbert N. Ludwig, Deputy Clerk.

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[fol. 39] In United States District Court, District of New Jersey

[Title omitted]

Order to Show Cause

The petitioner in the above entitled cause having filed his petition in the United States District Court in and for the District of New Jersey, wherein and whereby he prays for an order of this Court enjoining and restraining All Continent Corporation, its officers, servants, agents and attorneys from proceeding with or further prosecuting an action instituted by it in the United States District Court for the Eastern District of Pennsylvania until the further order of this Court, and for such other general relief as may be deemed just and proper under the circumstances, the premises considered;

Now, on reading the petition filed in this cause duly verified by the oath of the petitioner, Hiram Steelman, Trustee in Bankruptcy for William Fox, and it satisfactorily appearing to me that there are sufficient grounds for granting an order to show cause why such relief should not be granted;

It is, therefore, on this 22nd day of September, 1936, [fol. 40] Ordered that the said All Continent Corporation appear before me in the Court Room of the above entitled court, at the Post Office Building, at Camden, New Jersey, on the 25th day of September, 1936, at the hour of 10:30 o'clock in the forenoon, to show cause, if any it has, why it should not be enjoined from further prosecuting its suit against John S. Wynn, James H. Wynn, Harold A. Longwell, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice Wynn and James J. Longwell, co-partners trading under the firm name of J. W. Sparks Company, Capital Company and Hiram Steelman, Trustee of the Estate of William Fox, a bankrupt; and

It is further Ordered that copies of the verified petition and of this order which may be certified as "true copies" either by the attorney for the petitioner or by the petitioner, be served within One day upon said All Continent Corporation or upon its attorney.

John Boyd Avis, Judge of the United States District Court, for the District of New Jersey.

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IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS

And now, September 25, 1936, comes All Continent Corporation, appearing de bene esse, by its Counsel, Frederick H. Spotts, Esq., and moves to dismiss the petition of the trustee for stay of litigation instituted by All Continent Corporation in the Eastern District of Pennsylvania, for the following reasons:—

1. The bankruptcy court is without jurisdiction to decree the requested stay in a summary proceeding.

[fol. 41] 2. The bankruptcy court has no power to grant the requested stay.

3. The principles of comity require that this court should not interfere with the process of the court in the Eastern District of Pennsylvania.

Riggins & Davis, Frederick H. Spotts, Attorney de bene esse for All Continent Corporation.

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IN THE UNITED STATES DISTRICT COURT

OPINION OF COURT

Memorandum

AVIS, District Judge:

The trustee in the above bankruptcy case has filed a petition, the prayer of which is to restrain All Continent Corporation (hereinafter called Corporation) from further prosecution of a certain equity action instituted by Corporation against John S. Wynn, et al., trading as J. W. Sparks & Company, Capital Company and Hiram Steelman, trustee appointed in this action. The object of the suit is to recover certain securities in possession of Sparks & Company, which Corporation alleges to be its property. Capital Company is made a defendant because it has a judgment entered of record in the United States District Court for the Southern District of New York in the sum of $297,412.91 against William Fox, and is attempting to discover assets of bankrupt. The Capital Company has issued a subpœna against Sparks & Company, designated under the procedure as a "third party subpœna", which has endorsed upon it a restraint against Sparks & Company from transferring any property belonging to the [fol. 42] judgment debtor, who is William Fox, until the further order of the Court. It is claimed in the bill of complaint that under these circumstances Sparks & Company refused to deliver the securities to Corporation. It is further claimed that Hiram Steelman, as trustee, has appeared in this court and approved, or joined in, an application to permit the suit in the New York District Court to be continued, and that therefore the said trustee is also claiming an interest in the securities aforesaid. No proof was offered as to this fact, nor is any law or case argued or submitted to the Court to sustain the contention that

such action on the part of the trustee, if true, makes the trustee a party sufficient to justify his inclusion as a defendant in the Pennsylvania Court. The trustee has asserted that he has not made any claim on Sparks & Company for the securities.

William Fox was adjudicated bankrupt on his voluntary petition on May 29, 1936, and subsequently Hiram Steelman was appointed trustee. Since that time, on application of certain creditors, Robert E. Steedle, referee, to whom the matter was referred, has issued an order for examination of certain parties under Section 21 (a) of the Bankruptcy Act (11 USCA sec. 44 (a)), and considerable testimony has been taken under that order. It is not necessary in the instant proceeding that this testimony should be closely reviewed or analyzed. It is sufficient to state that a grave question has arisen as to whether the property and assets of Corporation actually belong to the defendant. If eventually it is found that it does, the title to the securities involved in the suit in the United States District Court for the Eastern District of Pennsylvania would be in bankrupt, and should be administered in the bankruptcy proceedings in this court.

[fol. 43] It is apparent from reading the bill of complaint, that the effort of Corporation in that suit is to force the trustee to appear and litigate the entire question now before this Court in the bankruptcy proceedings, that is, whether actually the property and assets of Corporation belong to the bankrupt. Such litigation as against Corporation, if ultimately deemed advisable, ought to be conducted by trustee after there has been a full and complete disclosure of the facts in the 21 (a) examinations. An examination of the cases demonstrates that creditors are entitled to have the assets of a bankrupt administered in the bankruptcy court. Any interference therewith may be restrained until that court has fully administered the assets. Especially is this so if the pendency or determination of an action will interfere with the proper and speedy enforcement of the Act or tend to embarass the court.

Counsel for Corporation challenges the jurisdiction of the Court on the ground that the instant proceeding is summary, and asserts that the trustee should proceed in a plenary suit. Numerous cases are cited, but none of them is pertinent to the issue. They all involve the question

of title to property claimed by the representative of the bankrupt's estate, which is in possession of a third party. In such instances the action must be by plenary suit, unless the claim of the third party appears to be only colorable, when it may be determined in a summary manner.

The petition of trustee in the instant case makes no direct claim of property as against Sparks & Company. The statements indicate that his claim is against the Corporation. He is not presently interested in the possession of the securities so long as his ultimate rights, if he has any, against the Corporation, are preserved.

The action in the court in Pennsylvania was commenced [fol. 44] on September 8, 1936, long after this court had jurisdiction of the bankrupt's estate, and whether leave of court was required before the institution of the action, I deem to be immaterial.

However, I am satisfied that to require the trustee to appear and defend that suit, with the bankruptcy proceedings in their present state, would interfere materially with proper administration.

I do not believe that I can restrain action of the Corporation against the other defendants, but I deem it my duty to restrain the Corporation as to further prosecution of its action against the trustee in bankruptcy.

Order accordingly.

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IN THE UNITED STATES DISTRICT COURT

DECREE

Hiram Steelman, Esquire, the Trustee for the above-named bankrupt, having filed his petition in this cause by which it appears that All Continent Corporation, a corporation, has instituted a certain equity action in the United States District Court for the Eastern District of Pennsylvania against John S. Wynn, James H. Wynn, Harold A. Longwell, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice Wynn and James A. Longwell, copartners trading as J. W. Sparks & Company, Capital Company and Hiram Steelman, Trustee in Bankruptcy for William Fox, said petitioner herein, the object of which suit is to recover certain securities in possession of said J. W. Sparks & Company which said All Continent Corporation alleges to

be its property and upon the title of which said All Continent Corporation further alleges there is a cloud by [fol. 45] reason of a certain restraint endorsed upon a "third party subpœna" issued out of the United States District Court for the Southern District of New York and served upon said J. W. Sparks & Company in supplementary proceedings to discover assets of the aforesaid bankrupt which might be attached to satisfy a certain judgment entered in said court in favor of Capital Company and against said bankrupt.

And this Court being of the opinion that this petitioner, the trustee in this cause has been improperly made a party defendant in said suit pending in said United States District Court for the Eastern District of Pennsylvania and being further of the opinion, after due consideration of the facts and arguments of counsel for the parties, that the prosecution of said suit against said Trustee would interfere materially with the proper and orderly administration of the affairs of this bankrupt estate;

It is on this 7th day of October, 1936 Ordered that said All Continent Corporation be and it is hereby enjoined and restrained from further prosecuting its said suit instituted in the said United States District Court for the Eastern District of Pennsylvania against said Hiram Steelman, Trustee in Bankruptcy for William Fox, the petitioner herein.

And it is further Ordered that a copy of this order, certified by the attorney for petitioner herein, be served on said All Continent Corporation by serving same upon a director or officer thereof or upon its attorney.

John Boyd Avis, Judge of the United States District Court for the District of New Jersey.

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[fol. 46] IN THE UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR ON APPEAL BY ALL CONTINENT CORPORATION

And Now, October 20th, 1936, All Continent Corporation, by Frederick H. Spotts, and Riggins & Davis, its attorneys, files the following as errors in the record, proceedings and judgment in the above case:

1. The Court erred in denying the motion of All Continent Corporation to dismiss the petition of the Trustee in Bankruptcy to restrain the said All Continent Corporation from further prosecuting an action against the said Trustee in Bankruptcy in the United States District Court for the Eastern District of Pennsylvania.

2. The Court erred in finding that the prosecution of said suit against said Trustee would interfere materially with the proper and orderly administration of the affairs of the bankrupt estate.

3. The Court erred in entering a final decree restraining All Continent Corporation from further prosecuting its suit instituted in the United States District Court for the Eastern District of Pennsylvania against Hiram Steelman, Trustee in Bankruptcy for William Fox.

Frederick H. Spotts, Riggins & Davis, Attorneys for All Continent Corporation, Appellant.

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[fol. 47] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL

To the Honorable the Judges of the United States District Court for the District of New Jersey:

The above named All Continent Corporation, a corporation organized under the laws of the State of Delaware, is the respondent in proceedings brought by Hiram Steelman, Trustee in Bankruptcy for William Fox, the Bankrupt, to restrain the said All Continent Corporation from further prosecuting a suit instituted by the said All Continent Corporation in the United States District Court for the Eastern District of Pennsylvania against the said Hiram Steelman, Trustee in Bankruptcy.

It conceives itself aggrieved by the final decree of your Honorable Court enjoining and restraining it from further prosecuting its said suit instituted in the United States District Court for the Eastern District of Pennsylvania against said Hiram Steelman, Trustee in Bankruptcy for William Fox, entered in the United States District Court for the District of New Jersey on October 7, 1936; and does hereby appeal from said decree to the United States Circuit Court

of Appeals for the Third Circuit, for the reasons specified in the Assignments of Error filed herewith, and prays that this appeal may be allowed and that a citation may issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit.

And your petitioner further prays that the proper order relating to the required security be made.

All Continent Corporation, by Frederick H. Spotts, Riggins & Davis, Its Attorneys.

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[fol. 48] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL

Before AVIS, J.

A-D NOW, to wit, this 20th day of October, 1936, on consideration of the foregoing petition, it is upon motion of Frederick H. Spotts and Riggins & Davis, attorneys for All Continent Corporation, the petitioner, ordered by the Court that the appeal prayed for therein be and the same is hereby allowed. Bond in $250.00.

By The Court.

John Boyd Avis, J.

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IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR PRINTING RECORD

To the Clerk of the District Court:

Please certify for printing the following portions of the Record in the above case for the appeal taken by All Continent Corporation to the Circuit Court of Appeals for the Third Circuit:

1. Relevant Docket Entries.
2. Petition of Hiram Steelman, Trustee in Bankruptcy for Stay of Litigation. Exhibit A—Subpœna in Equity. Exhibit B—Bill of Complaint in case of All Continent Corporation v. Wynn, et al. Exhibit C—Order Directing Appearance of Defendant.
3. Order to Show Cause.

4. Motion to Dismiss.
5. Opinion of Court upon Petition to Stay Litigation.
[fol. 49] 6. Decree of Court Granting Injunction.
7. Assignments of Error.
8. Petition for an Order Allowing Appeal.

Frederick H. Spotts, Riggins & Davis, Attorneys for Appellant, All Continent Corporation.

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[fol. 50] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 51] IN UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

#6253

In the Matter of WILLIAM FOX, Bankrupt;

ALL CONTINENT CORPORATION, Petitioner,

against

HIRAM STEELMAN, Trustee in Bankruptcy of William Fox, Respondent

ORDER GRANTING LEAVE TO APPEAL AND GRANTING MOTION TO INCLUDE ADDITIONAL MATTER IN RECORD, ETC.

A motion having been made herein by counsel for All Continent Corporation, for leave to appeal from a certain [fol. 52] order of the United States District Court for the District of New Jersey, dated October 7, 1936, and for leave to include in the transcript of record in said appeal certain papers and pleadings more particularly referred to in the petition of All Continent Corporation, verified *October 26, 1936*; and counsel for said Hiram Steelman, trustee as aforesaid, having interposed objections to the inclusion of said papers and pleadings in said transcript of record, and the consideration thereof on this appeal;

Upon Consideration Thereof, it is

Ordered that said motion be and hereby is in all respects granted; and it is further ordered that the inclusion, in the transcript of record, of the additional papers hereinabove referred to, shall be without prejudice to the right of the

respondent to object to the consideration of the said papers, by this Court, on the hearing of this appeal. On the statement that all parties agree hereto the same is granted.

Per Curiam. Buffington, C. J. U. S. C. J.

A true copy. Wm. Elmer Brown, Jr., Solicitor of Complainant.

IN CHANCERY COURT OF NEW JERSEY

BILL OF COMPLAINT

To the Honorable Luther A. Campbell, Chancellor of the State of New Jersey:

The complainant, Hiram Steelman, Trustee in Bank-[fol. 53] ruptcy for William Fox, a bankrupt, a resident of the City of Atlantic City, Atlantic County, New Jersey, respectfully shows that:

1. William Fox, a resident of the City of Atlantic City, Atlantic County, New Jersey, was adjudicated a bankrupt by order of the United States District Court, for the District of New Jersey, on May 29, 1936.

2. Thereafter, on June 25, 1936, Hiram Steelman, the complainant herein, was appointed Trustee of said bankrupt and his estate by Honorable Robert E. Steedle, Referee in Bankruptcy to whom said bankruptcy matter was referred, and said complainant promptly thereafter duly qualified as such trustee and thereby became entitled to receive into his possession all of the assets of said bankrupt.

3. This action is instituted herein by and with the approval of the United States District Court for the District of New Jersey, in which court said Fox was adjudicated a bankrupt as aforesaid, and the order approving same was made by said Honorable Robert E. Steedle, Referee, and entered on October 13th, 1936.

I

4. Prior to his adjudication in bankruptcy as aforesaid, and on or about October, 1930, said William Fox formed a corporation known as All Continent Corporation, which, at his instance and direction was organized under and by virtue of the laws of the State of Delaware. Said corpora-

tion was formed allegedly for the purpose of dealing in stocks and securities of various kinds and descriptions.

[fol. 54] 5. At the time of the formation and organization of said All Continent Corporation the principal business of said William Fox was that of dealing in and the buying and selling of stocks, bonds and securities of various kinds and description.

6. On or about December 23, 1930, said William Fox was possessed of stocks, bonds and various kinds of securities of the then total value of at least $6,100,000.00 and between the dates of December 23rd and December 29th, 1930, said Fox assigned, transferred and conveyed all of his said securities of the value aforesaid to All Continent Corporation. The method of making said assignment or transfer was as follows:

Said William Fox on six different occasions between the dates aforesaid borrowed large sums of money from certain brokers, and at the time of each of said borrowings he deposited certain of the aforesaid securities with said brokers as collateral security for the respective loans. The total amount borrowed was approximately $6,100,000. Each time that said Fox had borrowed from said brokers he in turn gave the sum so borrowed to All Continent Corporation and with said money said All Continent Corporation purchased the securities which said Fox had deposited with said brokers, thus satisfying the debt of said Fox, and then and there, it, the said All Continent Corporation, is alleged to have taken said securities into its possession, thus acquiring all of the securities which he, the said Fox, theretofore owned of the aggregate total value of $6,100,000. as aforesaid.

7. In addition to the assignment and transfer of the aforesaid securities to said All Continent Corporation, said William Fox at or about the same time assigned to said All [fol. 55] Continent Corporation certain credits which he then owned and to which he was entitled from other brokers of the aggregate value of approximately $850,000.

8. In return for the assignment and transfer of said securities and said brokers' credits said All Continent Corporation issued and delivered to said Fox all of its capital stock, without additional consideration, so that said Fox then and there became the sole owner of said corporation.

9. Promptly after the assignment and transfer of said securities and brokers' credits to said All Continent Corporation as aforesaid, said All Continent Corporation directed that all of its assets consisting of stocks, bonds and other securities should be delivered and turned over to said William Fox, and immediately after he, the said Fox, had acquired possession thereof, he deposited said securities in his personal safe deposit box which was then and there and thereafter continued to be registered in his personal name and over which he alone had control. Said Fox alone had the right of access to said safe deposit box and to said securities deposited therein even to the exclusion of said All Continent Corporation or any qualified officer or director of it.

10. Also promptly after the transfer of said securities by said Fox to said All Continent Corporation and promptly after the assignment by him of said brokers' credits as aforesaid, All Continent Corporation executed and delivered to said William Fox power of attorney with broad and general powers and authority to sell the assets of said All Continent Corporation, reinvest all proceeds thereof, and [fol. 56] to do every manner of thing with said assets that he might do if they were his own.

11. Said William Fox and Eva Fox, his wife, claim to have entered into agreement on or about January 28, 1931, whereby he, the said William Fox, transferred and conveyed all of the capital stock of said All Continent Corporation consisting of 69,400 shares of Series "A" of the preferred stock and 1,000 shares of common stock to said Eva Fox, the wife of William Fox, as aforesaid, for the benefit of her, the said Eva Fox, during her lifetime and thereafter for the benefit of Belle Fox and Mona Fox, daughters of said William Fox, and ultimately for the benefit of the grandchildren of said William Fox, namely, William Fox Tauszig and William Fox Schwartz. A copy of said trust indenture is attached hereto, marked Exhibit "A" and by this reference is made a part hereof. Said William Fox Tauszig is the son of said Mona Fox and said William Fox Schwartz is the son of said Belle Fox.

12. Said William Fox Tauszig and William Fox Schwartz are infants under the age of fourteen years and are living and residing with their said parents respectively.

13. Said trust indenture was not delivered to said Eva Fox at or about the time it was allegedly made and executed and was not delivered to said Eva Fox for a long time thereafter, if at all.

14. The preferred and common stock of said All Continent Corporation which is the subject of said alleged trust indenture was not delivered to said Eva Fox, trustee, at or about the time said trust indenture was allegedly made [fol. 57] and executed, nor was said stock physically delivered to said trustee for a long time thereafter, if ever.

15. Said preferred and common stock which was the subject of said trust indenture has at no time been transferred on the books of said All Continent Corporation from the name of said William Fox to said Eva Fox, either personally or as trustee, and said stock ever since originally issued has continued to be registered on the books of said All Continent Corporation in the name of said William Fox and still is at this time so registered and recorded.

16. Ever since the formation and organization of said All Continent Corporation, the assets of said corporation have at all times been either in the possession or under the control and domination of said William Fox. All of said assets of All Continent Corporation which were not on deposit with stock brokers with whom said Corporation did business, were at all times in the possession of said Fox and kept by him in a safe deposit box registered in his individual name over which he alone had access and control until sometime during the year 1933, when said Fox made the necessary arrangements to give one Benjamin Reass, President of said All Continent Corporation and the personal attorney of said Fox, and Herbert Leitstein the Treasurer of said All Continent Corporation and personal secretary of said Fox, joint access to said safe deposit box with him, the said Fox.

17. The said William Fox managed, dominated and controlled the affairs of said All Continent Corporation from the time of its formation and organization as aforesaid and continuously thereafter.

[fol. 58] 18. From the time of its formation and organition said All Continent Corporation purchased, sold and dealt in stocks, bonds and securities of various kinds for the purpose of investment only. It at no time purchased, sold

or dealt in stocks, bonds and securities or other investments for or on account of any person other than itself or said William Fox, individually or acting in its guise as a corporate entity.

19. Said All Continent Corporation at the behest and direction of said William Fox opened accounts with certain stock brokers in and about the City of New York and elsewhere with whom the said Fox had theretofore and was then doing business. Said All Continent Corporation maintained said brokerage accounts in its own name as well as in the names of third parties. Said third party accounts with said brokers were in the same name as third party accounts which were kept and maintained with said brokers by said William Fox for and on his own account and particularly is that true with respect to a third party account maintained in the name of Ben Leo, who is a brother-in-law of said Fox.

20. On many and numerous occasions after the time when said Fox had allegedly assigned and transferred said stocks, bonds and other securities, as well as said brokers' credits to said All Continent Corporation, he, the said Fox, dealt with said assets of said Corporation as though they were his own and for his own personal benefit and gain.

21. Said All Continent Corporation at frequent times throughout the entire period of its existence, has made numerous disbursements for and on the account of the bankrupt and various other corporations owned and con- [fol. 59] trolled by him and the major portion of the transactions of said Corporation were transactions in which the bankrupt or the corporations which he owned were involved.

22. The business office of said All Continent Corporation was the office of said William Fox and the expense of the rental and maintenance of said office for the period from the time of the organization of said corporation until January 1, 1936, at least, was paid by said Fox from his personal funds.

23. Said William Fox employed one Herbert Leitstein as his personal secretary, and said Leitstein was the person charged with the keeping of the books and records of said Fox. Said Leitstein has also been in charge of the keeping

of the books and records of said All Continent Corporation from the time of its organization until now. The salary of said Leitstein throughout that entire period until January 1, 1936, was paid by said Fox from his personal funds and no part thereof was paid by All Continent Corporation. Since January 1, 1936, it is alleged that the salary of said Leitstein has been paid by said All Continent Corporation. Said Leitstein the personal secretary and bookkeeper of said Fox also was the treasurer of said All Continent Corporation from the time of its organization until sometime during the latter part of the year 1935.

24. Said William Fox from a period dating prior to the formation and organization of said All Continent Corporation and continuously until now has had as his personal attorneys a firm of lawyers known as Hirsh, Newman, Reass and Becker, who maintain offices in the City of New [fol. 60] York. Said firm of attorneys has also continued to be the attorneys of said All Continent Corporation from the date of its organization until now. Said firm of attorneys have for some years past, also acted as attorneys for said Eva Fox, Mona Fox and Belle Fox. Also complainant is informed from such source that he believes it to be true, that said firm of attorneys actively participated in all the things herein complained of and particularly those which resulted in the transfer of the assets and property of said Fox from him to said All Continent Corporation. Benjamin Reass, Esq., a member of the said firm of attorneys, acted as President of said All Continent Corporation from the time of its organization until sometime during the latter part of the year 1935 and other members of said firm did at various times throughout said period act as officers of said corporation.

25. From the time of the formation and organization of All Continent Corporation down until the present time its business has been confined to holding of securities and assets originally transferred to it by said Fox, to transactions dealing in these securities and others purchased from time to time out of the funds realized from the sale of the original securities and from moneys borrowed thereon. In addition thereto said Corporation has been used as a conduit or medium for the business transactions of said William Fox himself as well as other corporations which he owned and controlled.

26. Said All Continent Corporation paid no salary or compensation of any kind to said William Fox for the services which he rendered to it throughout the period of its existence.

[fol. 61] 27. No payments of money were made to said Eva Fox, the wife of said William Fox, from the income received from said alleged trust created by him from the time of the creation thereof until December 30, 1935, at which time she, the said Eva Fox, is alleged to have received the sum of $25,000.00 salary for services rendered by her during the year 1935. No provision for the payment of said sum was made by said All Continent Corporation prior to December, 1935.

28. Said William Fox heretofore organized certain other corporations of which he was either the sole owner or over which he exercised complete control. Said all Continent Corporation from time to time during its existence received certain moneys from said other corporations of said William Fox and also paid out moneys to them and for their account and also for the account of said Fox. The major portion of all the business done by the said All Continent Corporation was in connection with transactions with and for the bankrupt, with and for the corporations which he owned and controlled, or related to purchase and sale of securities which the corporation received from the bankrupt or which it permitted him to keep and deal with as though they were his own property.

29. A complete and thorough knowledge of the assets, liabilities and affairs of said William Fox can only be acquired by and through an audit or examination of the books and records of said William Fox in conjunction with the books and records of said All Continent Corporation.

30. The cash book of All Continent Corporation reveals that of a total of slightly more then $13,000,000. that has [fol. 62] been disbursed by said Company since its organization over $12,000,000. has been disbursed in connection with transactions with or for said William Fox, or the companies which he owns and controls.

31. During the course of the operation of the affairs of said All Continent Corporation from the time of its organization until December, 1935, it is alleged that William Fox became indebted to said All Continent Corporation by

reason of certain advances which were made by said Corporation to him in the aggregate amount of approximately $1,322,258.19 for which said Fox is alleged to have given to said All Continent Corporation his personal note secured by collateral consisting of stocks, bonds, securities and investments of various kinds and description.

32. At or about August, 1935, Eva Fox, the wife of said William Fox, Belle Fox and Mona Fox, daughters of said William Fox, are alleged to have become the directors of said All Continent Corporation. Also at or about said time said Eva Fox became President and Treasurer, Mona Fox became Secretary and Belle Fox became Vice President of said All Continent Corporation.

33. In the month of December, 1935, the collateral note of said William Fox given to said All Continent Corporation as aforesaid was foreclosed by the sale of all of the collateral security which had been deposited therewith and as a result of said sale said All Continent Corporation is alleged to have become possessed of all of said collateral security which theretofore belonged to said William Fox.

[fol. 63] 34. On February 2, 1936, said William Fox entered into agreement with said All Continent Corporation whereby it is alleged that he sold and conveyed certain property and assets enumerated therein to said All Continent Corporation, a true copy of said agreement is attached hereto, marked Exhibit "B" and by this reference is made a part hereof.

35. On May 23, 1936, said William Fox entered into agreement with said All Continent Corporation whereby it is alleged that he, the said Fox, conveyed and transferred to said All Continent Corporation certain shares of Building and Loan stock enumerated therein, which were theretofore the property of said William Fox, and that thereby said All Continent Corporation became the owner and possessor thereof. A true copy of said agreement is attached hereto, marked Exhibit "C" and by this reference made a part hereof.

36. By virtue of the sale of said collateral security and the transfer of property enumerated in agreements Exhibits "B" and "C" attached hereto, said William Fox was divested of all property of every kind and description which was of any importance or value, and he was thereby denuded

of all the vast wealth of which he had theretofore been possessed and which he had theretofore enjoyed.

37. In and by the voluntary petition in bankruptcy which was filed by said William Fox resulting in his adjudication as a bankrupt, said Fox listed liabilities in the aggregate amount of $9,535,261.91 and assets of a total or aggregate value of $1,590,000. Of said liabilities it is averred in said schedules that said Fox is indebted to said All Continent. [fol. 64] Corporation in the total sum of $417,258.19. Said averment in said schedules is incorrect and in error and said William Fox in not indebted to said All Continent Corporation in any amount. Of said total assets shown in said schedules, said William Fox represents that he is possessed of real estate of the total aggregate value of $1,400,000., of bills, promissory notes and securities of the total value of $190,000. and of cash on hand in the total sum of $100. The real estate which said Fox avers to be the value of $1,400,000. is referred to in his said schedules in the following manner. "Undivided one-half interest in property located on Market Street, in the City of San Francisco, State of California, owned by the petitioner, together with Capital Company, a California corporation, the other one-half undivided interest being owned by the Capital Company, a California corporation. The said undivided one-half interest of petitioner being subject to a deed of trust given to secure the payment of moneys loaned to the petitioner in connection with the acquisition of this property. The said deed of trust is a lien on the undivided one-half interest of your petitioner in the sum of $470,000. with interest. Estimated value of undivided one-half interest of petitioner which was acquired at an original cost of approximately $1,400,000. over and above the liens, mortgages and encumbrances thereon, and subject to the community interest of Eva Fox, as wife, is subject to possible defeasance of petitioner's title to foregoing real estate by reason of a purported sale thereof, under a deed of trust thereon, held on May 11, 1936, which sale petitioner claims was illegal and in violation of his rights." It is doubtful whether or not said William Fox is the owner of said interest in said real estate as alleged by him and it is also doubtful whether or not said real estate is of the value [fol. 65] alleged, and in order to determine the interest of said Eva Fox in said real estate it is necessary that liti-

gation be instituted in the State of California for the purpose of determining said ownership and the value thereof. The bills, promissory notes and securities which are listed in the said bankruptcy schedules of a total $190.00. consist of four notes of one C. H. Huston, all of which are long over due and the value of said notes is very doubtful. In fact complainant herein is informed that said Huston is at present time without property or means from which said indebtedness might be recovered, and also complainant has been unable thus far to ascertain the whereabouts of said Huston. A careful analysis of the schedules of said bankrupt, William Fox, discloses that at the time of the filing thereof and his adjudication in bankruptcy, he the said Fox, was to all intents and purposes without property of any value from which his various debts and liabilities might be paid and satisfied.

38. Complainant avers that said All Continent Corporation was formed and organized by said William Fox for the express purpose of defrauding his creditors then existing as well as those to whom said Fox thereafter became indebted.

39. Complainant further avers that said William Fox and said All Continent Corporation are one and the same.

40. Complainant also avers that the real object sought to be attained by said William Fox in the formation and organization of said All Continent Corporation was to thwart Fox's creditors and to retain for himself and his family in fraud of his creditors the full and unmolested enjoyment of all his assets.

[fol. 66] 41. Complainant further avers that said William Fox formed and organized All Continent Corporation and used its corporate form for the purpose of evading the law and perpetrating a fraud upon his creditors existing at the time of the formation thereof as well as those to whom he thereafter became indebted and that the legal entity of said corporation was interposed by him so as to defeat justice.

42. Complainant further avers that the formation and organization of said All Continent Corporation, and the transfer and assignment of assets by said Fox to said Corporation in return for the issuance and delivery of the capital stock of said Corporation to said Fox, the making of

said trust indenture by said Fox to said Eva Fox, trustee, the foreclosure sale of the collateral of said William Fox, deposited in connection with the note which said Fox delivered to said All Continent Corporation, the assignment and transfer by said Fox of the securities named in said agreement of February 3, 1936, the transfer and assignment by said Fox to said Corporation of the assets named in said agreement of May 23, 1936, as well as all of the other things done by and between said Fox and said All Continent Corporation as hereinbefore enumerated and set out, were each and every one of them a part of a general scheme or plan devised and put into effect by said William Fox in order to hinder, delay and defraud his creditors and to retain for himself and his family in fraud of his creditors the full and unmolested enjoyment of all his assets.

43. Complainant further avers that Eva Fox, the wife of the bankrupt, and Belle Fox and Mona Fox, daughters of said bankrupt, were in full and complete knowledge at all times of the things done as herein complained about [fol. 67] and they, the said Eva Fox, Belle Fox and Mona Fox either sat by and permitted said things to be done by said William Fox or assisted in the doing thereof all in fraud and to the damage of the creditors of said William Fox, and particularly is this so in connection with the organization of said All Continent Corporation, the creation of the alleged trust of the capital stock of said All Continent Corporation, the use of said All Continent Corporation for the personal benefit and gain of said William Fox, the foreclosure sale of the collateral of said Fox deposited with the note which said Fox had delivered to said All Continent Corporation and the transfer of the assets of said Fox by means of the said agreements of February 3rd and May 23rd, 1936.

44. Complainant further avers that as a result of the transfer by said Fox to said All Continent Corporation of assets which theretofore were owned by him and which transfer was made between the dates of December 23rd and December 29th, 1930, and the assignment to said All Continent Corporation of said brokerage credits at or about the same time, and also as a result of said trust indenture dated January 28, 1931, said William Fox became insolvent and thereafter continued to be insolvent.

45. Complainant further avers that none of the attempted transfers and assignments of assets by said William Fox to said All Continent Corporation were ever completely and legally consummated and this is particularly so insofar as the attempted assignment and transfer of December, 1930, the assignment to Eva Fox, trustee, in January, 1931, the sale of the collateral of said William Fox is December, 1935, and the assignment by virtue of the agreements dated February 3rd and May 23rd, 1936, are concerned.

[fol. 68] 46. Said All Continent Corporation maintains its business office in the City of Atlantic City, Atlantic County, New Jersey, and all of its books of account, records and property of every kind and description are maintained there. Said William Fox, Eva Fox, Belle Fox and Mona Fox are all residents of said Atlantic City.

II

47. Some time prior to the adjudication of said Fox as a bankrupt as aforesaid he assigned, transferred and conveyed certain real estate belonging to him and situate at Woodmere, Long Island, in the State of New York, to said Eva Fox, his wife. Said real estate was of considerable extent and of great value.

48. Both said Fox and Eva Fox, his wife, claim and allege the transfer of said Woodmere properties took place on or about April 14, 1930. However, complainant is informed from such source that he believes it to be true and therefore avers that the said transfer was not had and consummated at or about said time but in fact was consummated at a much later date, if at all.

49. Also it is claimed and alleged by said Fox that on or about August 20, 1931, he paid and satisfied a certain mortgage debt or obligation amounting to the sum of $20,000 which was a lien upon the aforesaid Woodmere property and that the payment thereof occurred after the transfer of said property to said Eva Fox. The sum so required to pay off and satisfy said mortgage was paid by said Fox from his personal funds.

50. Said Fox also claims and alleges that on or about [fol. 69] January 8, 1931, he assigned and transferred to said Eva Fox, his wife, 500 shares of the preferred stock

of Aronberg Fried Company and 200 shares of the stock of Whip-Poor-Will Corporation which theretofore belonged to and was owned by him and which said stocks then and there were of great value.

51. Also it is claimed and alleged by said Fox that on or about August 5, 1931, he assigned and transferred to said Eva Fox, his wife, 857 shares of the stock of Fox Westwood Corporation and 750 shares of Fox Hills Corporation which theretofore belonged to and was owned by him and which said stocks then and there were of great value.

52. Said Fox also alleges and claims that on or about January 4, 1933, he withdrew from his personal funds the sum of $32,684.00 with which he paid for and purchased 327 shares of the stock of Fox Westwood Corporation which were allegedly issued and delivered to said Eva Fox the wife of said William Fox, at some time during the year 1932.

53. Said Fox alleges and claims that said assignments and transfers and all of the things set out in the foregoing paragraphs hereof numbered 47 to 52, both inclusive, were intended to be and were in fact gifts from him to his said wife.

54. Said assignments and transfers of said property, money and stocks made by said Fox to Eva Fox, his wife, were made without any real, valuable or adequate consideration passing from her to him.

55. Said assignments and transfers were not in fact made at the times alleged and claimed by said Fox but were in fact made at much later times.

[fol. 70] 56. Also this complainant is informed and believes and therefore avers that said assignments and transfers were not in fact completely made and fully consummated.

57. Complainant also avers that said alleged assignments and transfers were made by said Fox to his said wife for the express purpose of defrauding his creditors then existing as well as those to whom he thereafter became indebted; that the real object sought to be attained by said Fox in making said assignments and transfers to his said wife was to thwart his creditors and to retain to himself and to his

said wife the full and unmolested enjoyment of said assets and property in fraud of his creditors existing at the time and those to whom he thereafter became indebted; that said assignments and transfers so made as aforesaid by said Fox to his said wife were made in covinous agreement between him and her to hinder, delay and defraud the creditors of said William Fox and to retain for himself and his said wife the full and unmolested enjoyment of all his assets in fraud of his creditors then existing and those to whom he thereafter became indebted; that said Fox made said assignments and transfers at a time when he was insolvent and unable to pay and satisfy his just debts and obligations; that as a result of said assignments and transfers, he, the said William Fox, became insolvent and particularly is this true by reason of the transfer of the assets of said Fox to said All Continent Corporation at or about the same time as said assignments and transfers were made to said Eva Fox as set out in the first part of this bill of complaint; and that said assignments and transfers were each and every one of them, a part of a general scheme or plan devised and put into effect by said William Fox in order to [fol. 71] hinder, delay and defraud his creditors and to retain to himself and his said wife and other members of his said family the full and unmolested enjoyment of all his assets in fraud of his creditors then existing as well as those to whom he thereafter became indebted.

III

58. Also some time prior to the adjudication of said Fox as a bankrupt as aforesaid he claims to have assigned and transferred to Belle Fox, his daughter, 905 of the voting trust certificates of Bankers Security Corporation and 70 shares of the common stock of said Bankers Security Corporation which said assignment or assignments, transfer or transfers are alleged to have taken place at or about January 1931.

59. Also said Fox claims to have paid and turned over to said Belle Fox the sum of $200,000.00 in cash withdrawn from his personal funds and that said payment was made at or about January, 1932.

60. Sometime during the years 1928 and 1929 said Fox also alleges and claims that he assigned and transferred to

said Belle Fox, his daughter, 160 shares of the preferred stock of said Bankers Security Corporation which theretofore belonged to and was owned by him.

61. Said Fox alleges and claims that said assignments and transfers and all of the things set out in the foregoing paragraphs hereof numbered 58 to 60, both inclusive, were intended to be and were in fact gifts from him to his said daughter, Belle Fox.

62. Said assignments and transfers of said property and money by said Fox to Belle Fox, his daughter, were made [fol. 72] without any real, valuable or adequate consideration passing from her to him.

63. Said assignments and transfers were not in fact made at the times alleged and claimed by said Fox but were in fact made at much later times.

64. Also this complainant is informed and believes and therefore avers that said assignments and transfers were not in fact completely made and fully consummated.

65. Complainant also avers that said alleged assignments and transfers of property and money were made by said Fox to his said daughter, Belle Fox, for the express purpose of defrauding his creditors then existing as well as those to whom he thereafter became indebted; that the real object sought to be attained by said Fox in making said assignments and transfers to his said daughter was to thwart his creditors and to retain to himself and to his said daughter the full and unmolested enjoyment of said assets and property in fraud of his creditors existing at the time and those to whom he thereafter became indebted; that said assignments and transfers so made as aforesaid by said Fox to his said daughter were made in covinous agreement between him and her to hinder, delay and defraud the creditors of said William Fox and to retain for himself and his said daughter the full and unmolested enjoyment of all his assets in fraud of his creditors then existing and those to whom he thereafter became indebted; that said Fox made said assignments and transfers at a time when he was involvent and unable to pay and satisfy his just debts and obligations; that as a result of said assignments and transfers he, the said William Fox, became insolvent and particularly is this true by reason of the transfer of the assets

[fol. 73] of said Fox to said All Continent Corporation at or about the same time as said assignments and transfers were made to said Belle Fox as set out in the first part of this bill of complaint; and that said assignments and transfers were, each and every one of them, a part of a general scheme or plan devised and put into effect by said William Fox in order to hinder, delay and defraud his creditors and to retain to himself and his said daughter and other members of his said family the full and unmolested enjoyment of all his assets in fraud of his creditors then existing and those to whom he thereafter became indebted.

IV

66. Also some time prior to the adjudication of said Fox as a bankrupt as aforesaid he claims to have assigned and transferred to Mona Fox, his daughter, 160 shares of the preferred stock of Bankers Security Corporation which said assignment and transfer is alleged to have taken place during the years 1926 and 1929.

67. Also said Fox claims to have paid and turned over to said Mona Fox the sum of $139,500.00 in cash withdrawn from his personal funds and that said payment was made at or about March 2, 1932.

68. Said Fox alleges and claims that said assignments and payment of money set out in the foregoing paragraphs hereof numbered 66 and 67, both inclusive, were intended to be and were in fact gifts from him to his said daughter, Mona Fox.

69. Said assignments and transfer of property and money by said Fox to said Mona Fox, his daughter, were made [fol. 74] without any real, valuable or adequate consideration passing from her to him.

70. Said assignments and transfers of property and money were not in fact made at the times alleged and claimed by said Fox but were in fact made at much later times.

71. Also this complainant is informed and believes and therefore avers that said assignments and transfers of property and money were not in fact completely made and fully consummated.

72. Complainant also avers that said alleged assignments and transfers of property and money were made by said Fox to his said daughter, Mona Fox, for the express purpose of defrauding his creditors then existing as well as those to whom he thereafter became indebted; that the real object sought to be attained by said Fox in making said assignments and transfers to his said daughter was to thwart his creditors and to retain to himself and to his said daughter the full and unmolested enjoyment of said assets and property in fraud of his creditors existing at the time and those to whom he thereafter became indebted; that said assignments and transfers so made as aforesaid by said Fox to his said daughter were made in covinous agreement between him and her to hinder, delay and defraud the creditors of said William Fox and to retain for himself and his said daughter the full and unmolested enjoyment of all his assets in fraud of his creditors then existing and those to whom he thereafter became indebted; that said Fox made said assignments and transfers at a time when he was insolvent and unable to pay and satisfy his just debts and obligations; that as a result of said assignments and transfers he, the said William Fox, became insolvent and par-
[fol. 75] ticularly is this true by reason of the transfer of the assets of said Fox to said All Continent Corporation at or about the same time as said assignments and transfers were made to said Mona Fox as set out in the first part of this bill of complaint; and that said assignments and transfers were each and every one of them, a part of a general scheme or plan devised and put into effect by said William Fox in order to hinder, delay and defraud his creditors and to retain to himself and his said daughter and other members of his said family the full and unmolested enjoyment of all his assets in fraud of his creditors then existing and those to whom he thereafter became indebted.

73. Complainant has not a complete, adequate and safe remedy at law in the premises.

Prayer

Wherefore, Complainant prays:

1. That All Continent Corporation, William Fox, Eva Fox, Belle Fox, Mona Fox, William Fox Tauszig and Wil-

liam Fox Schwartz, who are the defendants to this suit may answer this bill of complaint and each statement therein made;

2. That the said defendants may make discovery of what property and assets said All Continent Corporation owns and possesses or to which it is entitled, the character and nature thereof, its probable value, and where the same may be found;

3. That said All Continent Corporation may be decreed to be the alter ego of said William Fox and that said All Continent Corporation and said William Fox are one and the same;

[fol. 76] 4. That all of the assets of said All Continent Corporation may be decreed to be the assets and property of said William Fox;

5. That said All Continent Corporation may be decreed to hold all of the assets and property claimed to be owned by it and standing in its name, in trust for said William Fox, bankrupt, and/or this complainant, Trustee in bankruptcy for said William Fox, bankrupt;

6. That said assignment and transfer of assets and property made by said William Fox to said All Continent Corporation between the dates of December 23rd and 29th, 1930, in the manner hereinbefore set forth, as well as the assignment and transfer of said brokers' credits at or about the same time, may be set aside and held to be fraudulent and declared to be null and void and of no effect as against the creditors of said William Fox and this complainant;

7. That said indenture of trust dated January 28, 1931, may be set aside and held to be fraudulent and declared null and void and of no effect as against the creditors of said William Fox and this complainant;

8. That the sale of the collateral which said Fox deposited with his said note with said All Continent Corporation which sale took place in the month of December, 1935, and by which said All Continent Corporation became possessed of said collateral and thereby claims to be the owner thereof, may be set aside and held to be fraudulent and declared to be null and void and of no effect as against the creditors of said William Fox and this complainant;

9. That the assignment and transfer of the property [fol. 77] and assets enumerated in said agreements dated February 3, 1936, and May 23rd, 1936, may be set aside and held to be fraudulent and declared to be null and void and of no effect as against the creditors of said William Fox and this complainant;

10. That said All Continent Corporation may be enjoined and restrained from selling, assigning, transferring, mortgaging or otherwise disposing of or encumbering said assets and that said injunction and restraint shall date from the time of the filing of this bill of complaint and to remain in full force and effect until the further order of this Court or until the matters and things in issue herein shall be finally determined;

11. That this Court shall appoint a receiver to take and hold in his possession all of the assets of said All Continent Corporation wherever the same may be found and whatever the same may be, to manage, control and preserve the same under the supervision of this Court from the time of the filing of this bill of complaint, or as soon thereafter as his appointment can be made, until the matters and things here in issue can be finally determined;

12. That said defendants, Eva Fox, Belle Fox and Mona Fox, may make discovery concerning any and all property or thing of value which may have heretofore been assigned or transferred by said William Fox to them or either of them;

13. That all the assets and property herein alleged or claimed to have been assigned and transferred by said William Fox to said defendants, Eva Fox, Belle Fox and Mona Fox, may be decreed to be the assets and property of said William Fox;

[fol. 78] 14. That said Eva Fox, Belle Fox and Mona Fox, either or all of them, may be decreed to hold all of the assets and property claimed to have been assigned and transferred to them by said William Fox as herein alleged, in trust for said William Fox, bankrupt, and/or this complainant, Trustee in bankruptcy for said William Fox, bankrupt;

15. That the said assignments and transfers of the assets and property of said William Fox to said defendants,

Eva Fox, Belle Fox and Mona Fox as hereinbefore set forth may be set aside and held to be fraudulent and declared to be null and void and of no effect as against the creditors of said William Fox and this complainant;

16. That said Eva Fox, Belle Fox and Mona Fox may be enjoined and restrained from selling, assigning, transferring, mortgaging or otherwise disposing of or encumbering any of the assets and property so assigned and transferred by said William Fox to them and each of them as hereinbefore set forth and that said injunction and restraint shall date from the time of the filing of this bill of complaint and to remain in full force and effect until the further order of this Court or until the matters and things in issue herein shall be fully determined;

17. That this Court shall appoint a receiver to take and hold in his possession all of the assets and property now in the possession of or claimed to be owned by said defendants, Eva Fox, Belle Fox and Mona Fox, all or either of them, by reason of the alleged assignment and transfer thereof to them by said William Fox as aforesaid, wherever the same may be found or whatever the same may be, [fol. 79] to manage, control and preserve the same under the supervision of this Court from the time of the filing of this bill of complaint or as soon thereafter as his appointment can be made, until the matters and things here in issue can be finally determined;

18. That a writ of subpœna may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises;

19. That this complainant may have such other relief in the premises as this Court may deem just and proper.

Wm. Elmer Brown, Jr., Solicitor for and of Counsel with Complainant.

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EXHIBIT "A" TO BILL OF COMPLAINT

William Fox, Executive Offices, Fox Studio Building

West 55th Street, New York

Office of Herbert Leitstein, Auditor

This indenture made this 28th day of January, 1931, between William Fox, residing at 270 Park Avenue, Borough

of Manhattan, City and State of New York (hereinafter called the "Grantor") and Eva Fox, residing at 270 Park Avenue, Borough of Manhattan, City and State of New York (hereinafter called the "Trustee")

[fol. 80] Witnesseth

That the Grantor in consideration of the sum of One Dollar, to him in hand paid by the Trustee, the receipt whereof is hereby acknowledged, and the covenants hereinafter contained, hath sold, assigned, transferred and set over and by these presents doth sell, assign, transfer and set over unto the Trustee the securities and property specified and described in a schedule hereto annexed and marked "Schedule A" (hereinafter sometimes referred to as the "Trust Estate") the receipt of which securities and property is hereby acknowledged by the Trustee.

To Have and to Hold the said Trust Estate to the said Trustee upon the following express trust and conditions and with the powers and limitations hereinafter conferred and set forth, that is to say

I

(A) To collect the income on the Trust Estate and to retain the same after deducting all proper charges and expenses for her own use and benefit during her lifetime.

(B) During her lifetime to divide the said Trust Estate into two equal and separate parts, the first to be known as and is hereinafter called the First Trust Fund and the second to be known as and is hereinafter called the Second Trust Fund.

(C) Upon on the death of the Trustee the First Trust Fund shall be sold, transferred, assigned and set over to Mona, daughter of the Grantor as Substituted Trustee for the following purposes and subject to the following conditions

[fol. 81] (1) To collect the income thereon and to retain same after deducting all proper charges and expenses for her own use and benefit during her lifetime. Upon her death the said First Trust Fund together with any accumulated income thereon shall be paid and transferred to William Fox Tauszig, grandson of the Grantor, absolutely.

(2) In the event that Mona shall die before the said William Fox Tauszig has attained his majority then in

that event the said First Trust Fund shall, upon the death of Mona, be held in trust by the then guardian of the said William Fox Tauszig during the latter's minority, the income thereon to be used for the education and maintenance of the said William Fox Tauszig during his minority. The said First Trust Fund and any accumulated income thereon shall be paid and transferred to William Fox Tauszig absolutely upon attaining his majority. If the said William Fox Tauszig shall fail to attain his majority then upon his death, or if he shall predecease Mona, then upon the death of Mona the said First Trust Fund shall be paid and transferred to the descendants, if any, of the said William Fox Tauszig, then surviving, and if there be none then to William Fox Schwartz.

(3) If Mona predeceases Eva Fox the Trustee herein, the First Trust Fund shall upon the death of the said Trustee be assigned and set over to the then guardian of the aforesaid William Fox Tauszig and distributed for his benefit as provided in paragraph I (C) subdivision (2) hereof.

(D) Upon the death of the Trustee, the Second Trust Fund shall be sold, transferred, assigned and set over to Belle, daughter of the Grantor, as Substituted Trustee [fol. 82] thereof for the following purposes and subject to the following conditions:

(1) To collect the income thereon and to retain the net income thereon after deducting all proper charges and expenses during her lifetime for her own use and benefit. Upon her death, the said Second Trust Fund together with any accumulated income thereon shall be paid and transferred to William Fox Schwartz, grandson of the Grantor, absolutely.

(2) In the event that Belle shall die before the said William Fox Schwartz has attained his majority then in that event the said Second Trust Fund shall, upon the death of Belle, be held in trust by the then guardian of the said William Fox Schwartz during the latter's minority, the income thereon to be used for the education and maintenance of the said William Fox Schwartz during his minority. The said Second Trust Fund and any accumulated income thereon shall be paid and transferred to William Fox Schwartz absolutely, upon attaining his majority. If the

said William Fox Schwartz shall fail to attain his majority, then upon his death, or if he shall predecease Belle, then upon the death of Belle the said Second Trust Fund shall be paid and transferred to the descendants, if any, of the said William Fox Schwartz, then surviving, and if there be none then to William Fox Tauszig.

(3) If Belle predeceases Eva Fox the Trustee herein, the Second Trust Fund shall upon the death of the said Trustee be assigned and set over to the then guardian of the aforesaid William Fox Schwartz and distributed for his benefit as provided in paragraph I (D) subdivision (2) hereof.

[fol. 83] (E) It is the intention of the Grantor that during any one year the then life beneficiary of the first and second trust fund shall receive as income thereon the sum of at least $50,000. If, therefore, during any one year the income received does not equal the sum of $50,000. from either trust fund then the life beneficiary during said year may, if she so desires, receive an amount of principal from said trust fund which together with the income on said trust fund for said year would equal $50,000.

II

The Trustee Eva Fox is expressly authorized and empowered, though not required, to retain any and all securities and property transferred to her hereunder or hereafter received by her with full power and authority to change investments and to invest and reinvest the principal in such stocks, bonds and property as she in her discretion may determine and whether or not the same be authorized by law for the investment of trust funds.

III

The Grantor shall have the right at any time and from time to time to assign, transfer, deliver or deposit with the Trustee additional securities or property which thereupon shall become a part of the trust estate and subject in every way to the trust and the terms and conditions of this indenture.

IV

The Trustee (including the substituted trustees and any other persons who may at any time perform the functions

of a trustee or guardian of any minor hereunder) shall have full power to do the following:

[fol. 84] (A) To retain any and all real property hereafter conveyed and made part of the trust estate and to lease and release the same from time to time and to collect the rents therefrom with full power and authority to dispose of such property or any part thereof, at public or private sale, and upon such terms and conditions as to cash or credit or otherwise as the said Trustee shall deem proper and advisable, and to execute, acknowledge and deliver the necessary and proper deed or deeds for transfer to the purchaser or purchasers thereof; to consent to and enter into an agreement for the voluntary partition or sale of so much of said property as the grantor may hold in common with others, or to institute a suit for partition or sale of the same, and upon any such sale or sales in partition to proceed with the execution of the necessary deed, or deeds, for the conveyance to the purchaser thereof. Said Trustee shall have the power and authority to extend any existing mortgage or mortgages and to negotiate a loan or loans upon the security of any real estate or other property forming a part of said trust, if she deems such loans necessary and advisable, and to make, execute and deliver a mortgage or mortgages as security therefor, and such other papers as may be necessary in connection therewith.

(B) In her sole discretion to cause the securities which, may, from time to time, comprise the trust fund, or any part thereof, to be registered in her name as trustee hereunder or in her own name, or in the name of her nominee, or may take and keep them unregistered, and may retain them or any part thereof in such condition that they will pass by delivery.

(C) In the discharge of her duties hereunder to employ counsel and agents and to determine and pay to them reasonable compensation and she shall be entitled to reim-[fol. 85] bursement for the same, and for such other expenses and charges as she may deem necessary and proper to incur.

(D) To deposit any trust property with any protective or reorganization committee, to delegate discretionary powers thereto, to pay such part of the expenses and compensation of such committee as the trustee may deem proper,

to accept and retain new securities in exchange for those deposited, whether or not such new securities might be considered to be in the class legal for the investment of trust funds, to vote upon any proposition or election at any meeting of stock or security holders, and to grant proxies, discretionary or otherwise to vote at any such meeting.

(E) To allocate all cash dividends to income and all stock dividends to principal.

(F) In any case where the Trustee is required to divide the trust estate into one or more trust funds or to distribute the same, to make such division or such distribution in her sole and uncontrolled discretion and the judgment of the trustee concerning the propriety thereof and the relative values for the purpose of division or distribution of the property and securities so allotted shall be binding and conclusive on all persons interested therein.

(G) To hold the Trust Estate or any part thereof in one or more consolidated funds in which the trust funds hereunder shall have undivided interests.

V

Since the trustee and the substituted trustee provided for in paragraph I hereof are life beneficiaries hereunder, such [fol. 86] trustee and substituted trustees shall not receive any compensation for personal services rendered in the administration of the trust.

VI

Neither this agreement nor any part thereof can at any time be altered, modified, revoked, cancelled or annulled.

VII

The Trustee Eva Fox by joining in the execution of this instrument signifies her acceptance of the trust.

VIII

It is mutually agreed that these presents shall extend to and be obligatory upon the executors, administrators, legal representatives and assigns of the parties hereto.

This instrument is made in duplicate, each of which is an original but both together shall be deemed one and the same instrument.

William Fox, Grantor. (L.S.) Eva Fox, Trustee. (L.S.)

STATE OF NEW YORK,
County of New York, ss:

On this 28th day of January, 1931, before me personally came William Fox and Eva Fox to me known and known to me to be the individuals described in and who executed the foregoing instrument and acknowledged to me that they executed the same.

C. S. Leon, Notary Public. Notary Public term ex-
[fol. 87] pires March 30th, 1931. New York County Clerk's No. —. Registers No. —.

Schedule A

| | |
|---|---|
| William Fox | 69,400 shares Series A Pfd Stock of All Continent Corporation |
| Eva Fox | 1,000 shares of Common Stock of All Continent Corporation |

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EXHIBIT "B" TO BILL OF COMPLAINT

This Agreement, entered into the 3rd day of February, 1936, by and between William Fox, Hotel Claridge, Atlantic City, New Jersey, hereinafter referred to as Seller, and All Continent Corporation, a Delaware corporation, hereinafter referred to as Purchaser,

WITNESSETH:

Whereas, the Seller is the owner of lots numbered 10, 11, 24 and 25 in Block No. 30, and lots numbered 14 and 15 in Block No. 31, in "Map of Kensico Manor, Westchester County, New York, surveyed and drawn by John F. Fairchild, Civil Engineer, Mt. Vernon, New York, dated July 12, 1892", such property being free and clear, and all taxes having been paid to date; and

Whereas, the Seller is the owner and holder of a note dated December 22, 1932, made to his order by George Morton Levy, in the sum of $1,363.67, due two months after date, upon which note there is an unpaid balance of $563.67,

together with interest from December 22, 1932, to April 5, 1933 on the full amount of $1,363,67, with interest on $763.67 from April 5, 1933 to December 14, 1933, with interest on [fol. 88] $663.67 from December 14, 1933 to April 27, 1934, and with interest on $563.67 from April 27, 1934 to date; and

Whereas, the Seller is the owner of a seat on the New York Real Estate Securities Exchange, Inc.; and

Whereas, the Seller is the owner of eighty (80) shares of the capital stock of Comedy Amusement Company, Inc., which is capitalized for and has issued and outstanding, one hundred (100) shares; and

Whereas, the Seller is the owner of one hundred (100) shares of preferred and 100 shares of common stock of Woodyard Publications, Inc.; and

Whereas, the Seller is the owner of one hundred and eleven (111) shares of preferred stock of Fox Hearst Corporation; and

Whereas, the Seller is the owner of a first mortgage now reduced to the sum of $50,000 on property of Monaca Realty Co., Inc., located in Baldwin, Long Island; and

Whereas, the Seller is the owner of one hundred and eleven (111) shares of stock of Fox-Westwood Realty Company, Ltd.; and

Whereas, the aforesaid stock of Comedy Amusement Company, Inc. and Woodyard Publications, Inc., and the first mortgage on the Monaca property are now pledged as security for a loan in the sum of $20,000 from the Bankers Securities Corporation to the Seller, which loan is now past due, and under the collateral note which the Bankers Securities Corporation holds, said Bankers Securities Corpora- [fol. 89] tion is authorized to sell at public or private sale the said collateral; and

Whereas, the Seller desires to sell and the Purchaser desires to purchase from the Seller the aforesaid securities for $50,000;

Now, Therefore, the Parties Hereby Agree as Follows:

1. The Seller agrees to sell, transfer, assign, deliver and convey to the Purchaser, without recourse, and the Purchaser agrees to purchase from the Seller, for the sum of $50,000, no part to be offset against amount now due Purchaser the following assets:

(a) Lots numbered 10, 11, 24 and 25 in Block No. 30 and lots numbered 14 and 15 in Block No. 31 on "Map of Kensico Manor, Westchester County, New York."

(b) Note dated December 22, 1932, made by George Morton Levy, in the sum of $1,363.67, in favor of the Seller herein, $563.67 being the unpaid principal amount thereon.

(c) The seat on the New York Real Estate Securities Exchange, Inc.

(d) Eighty (80) shares of the capital stock of Comedy Amusement Company, Inc.

(e) One hundred (100) shares of preferred stock and one hundred (100) shares of common stock of Woodyard Publications, Inc.

(f) First mortgage now reduced to $50,000 covering property located in Baldwin, Long Island.

[fol. 90] (g) One hundred and eleven (111) shares of preferred stock of Fox-Hearst Corporation.

(h) One hundred and eleven (111) shares of stock of Fox-Westwood Realty Company, Ltd.

2. The Purchaser shall pay to the Bankers Securities Corporation, the sum of $20,000, together with interest on the note of the Seller held by the Bankers Securities Corporation, dated October 18, 1935, said interest to be paid up to the date of payment, and may deduct the total amount thus paid to Bankers Securities Corporation from the aforesaid sum of $50,000. The Purchaser at the time of payment to the Bankers Securities Corporation shall procure from the Bankers Securities Corporation the aforesaid note dated October 18, 1935, together with all of the collateral under the said note, in such form and in such manner as the Purchaser may determine to be necessary to effectuate the transfer of good title thereto from the Bankers Securities Corporation to the Purchaser herein.

3. The Purchaser shall, upon payment of the aforesaid note to the Bankers Securities Corporation, deliver the same for cancellation to the Seller herein. The Purchaser will, on or before February 15, 1936, pay to the Bankers Securities Corporation the aforesaid sum sufficient to pay the aforesaid note and interest, and shall likewise pay to the

Seller, the difference between the said amount and the sum of Fifty Thousand Dollars ($50,000). Simultaneously therewith, the Seller shall deliver to the Purchaser all necessary papers, properly to transfer to the Purchaser all of the aforesaid assets.

4. The Seller represents that the certificate for the stock of Fox Westwood Realty Company, Ltd. has been lost or [fol. 91] misplaced, and agrees that he will take such steps as may be requested by the Purchaser to cause a new certificate therefor to be issued to the Purchaser.

5. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, legal representatives, successors and assigns.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

Wm. Fox. (L. S.) All Continent Corporation, by
Eva Fox. (L. S.) (Seal.)

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EXHIBIT "C" TO BILL OF COMPLAINT

This Agreement entered into this 23 day of May, 1936, by and between William Fox, residing at 130 So. Delancey Place, Atlantic City, New Jersey, hereinafter called Seller, and All Continent Corporation, a Delaware corporation, with principal offices at 1616 Pacific Avenue, Atlantic City, New Jersey, hereinafter called Purchaser.

Witnesseth:

Whereas, the Seller is the owner and holder of the following building and loan shares:

(A) 125 double shares of the Southwestern Building & Loan Association, represented by book No. D5201 of the face amount of $15,000;

[fol. 92] (B) 100 double shares of the Combined Building & Loan Association, represented by books Nos. 4107D-4115D of the face amount of $24,200; now standing in the name of Joe Hart; and

(C) 100 double shares of Manufacturers & Merchants Building Loan Association, represented by book No. 4113, of the face amount of $11,400; and

Whereas, all of the said building and loan associations are now in the process of liquidation, and/or rehabilitation; and

Whereas, the Seller has been advised that the various building loan associations are restrained from making any distribution pursuant to rules promulgated by the State Banking Department of the State of Pennsylvania, by reason of which it is uncertain when and if any dividends will be paid on the aforesaid shares; and

Whereas, the Seller desires to sell, and the Purchaser desires to purchase the said shares;

Now, Therefore, the parties hereto agree as follows:

1. The Seller does hereby assign, transfer and deliver unto the Purchaser all of his right, title and interest in and to the following:

(A) 125 double shares of the Southwestern Building & Loan Association, represented by Book No. D5201, of the face amount of $15,000;

(B) 100 double shares of the Combined Building & Loan [fol. 93] Association, represented by books Nos. 4107D-4115D of the face amount of $24,200, now standing in the name of Joe Hart; and

(C) 100 double shares of Manufacturers & Merchants Building & Loan Association, represented by Book #4113 of the face amount of $11,400;

together with all of the rights which have accrued and may accrue to the Seller in accordance with the foregoing.

2. The Seller agrees that he will execute such other and further papers as may be necessary to effectuate the transfer and assignment of the said shares.

3. The Purchaser agrees that it will, within ten days from date, pay to the Seller the sum of $3,500.00 for the transfer and assignment of the aforesaid shares, no part of which shall be offset or deducted from any amount now due the Purchaser.

4. This agreement shall be binding upon, and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, legal representatives, successors and assigns.

In Witness Whereof, the parties hereto have hereunto executed this agreement the day and year hereinabove first written.

William Fox, Seller. (L. S.) All Continent Corporation, by Eva Fox, Pres., Purchaser.

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[fol. 94] AFFIDAVIT OF HIRAM STEELMAN

STATE OF NEW JERSEY
County of Atlantic, ss:

Hiram Steelman, of full age, being duly sworn according to law, on his oath deposes and says:

1. William Fox, a resident of the City of Atlantic City, Atlantic County, New Jersey, was adjudicated a bankrupt by order of the United States District Court, for the District of New Jersey, on May 29, 1936.

2. Thereafter on June 25, 1936, I was appointed Trustee of said bankrupt and his estate by Honorable Robert E. Steedle, Referee in Bankruptcy to whom this matter was referred, and promptly thereafter I duly qualified as such Trustee and thereby became entitled to receive into my possession all of the assets of said bankrupt.

3. Thereafter, upon petition of the Capital Company and Chicago Title and Trust Company, two of the creditors of said bankrupt, it was ordered that All Continent Corporation, a corporation of the State of Delaware, Eva Fox, the wife of the bankrupt, Belle Fox and Mona Fox, both daughters of the bankrupt, Herbert Leitstein and Joseph Hart should be examined under Section 21-a of the Bankruptcy Act of 1898. Said order directing said examination was entered in the said bankruptcy proceedings on June 23, 1936.

4. In pursuance of said order directing said examination, subpoenas were issued out of this Court directing all of said parties named in said order to appear before said Referee for examination and requiring them to produce

certain books and records. All of said subpoenas were duly served upon said parties.

5. Said examination by virtue of said order began on [fol. 95] July 6, 1936, and has been diligently conducted ever since then until now and is still in progress. Much of the testimony adduced at said examination has come from witness Herbert Leitstein. Said Leitstein has for more than twenty-five years past acted as the personal secretary of said William Fox and during all that period has been in charge of the keeping of the books of account of said Fox. Also said Leitstein has been in charge of the keeping of the books of All Continent Corporation hereinafter referred to from the time of its formation until now.

6. I have attended during most of the time that said examination of witnesses has taken place by virtue of the aforesaid order, and have had access to a transcript of the testimony taken in that connection.

7. It has been disclosed during said examination that prior to his adjudication in bankruptcy as aforesaid and on or about October, 1930, said William Fox formed a corporation known as All Continent Corporation which at his instance and direction was organized under and by virtue of the laws of the State of Delaware. Further, it has been disclosed that said corporation was formed allegedly for the purpose of dealing in stocks and securities of various kinds and description.

8. Said examination further discloses that at the time of the formation and organization of said All Continent Corporation, the principal business of said William Fox was that of dealing in and the buying and selling of stocks, bonds and securities of various kinds and description.

9. It has also been disclosed in the manner aforesaid that on or about December 23, 1930, said William Fox was [fol. 96] possessed of stocks, bonds and various kinds of securities of the then total value of at least $6,100,000.00, and between the dates of December 23rd and December 29th, 1930, said Fox assigned, transferred and conveyed all of his said securities of the value aforesaid to All Continent Corporation. Said securities were so assigned and transferred to and acquired by said All Continent Corporation in the following manner:

Prior to December 23, 1930, said securities acquired by All Continent Corporation at an alleged cost to it of $6,100,000.00 were in a vault maintained by said Fox at the Chemical Safe Deposit Company, 46th Street and Madison Avenue Branch, New York City. At that time said Fox had a brokerage account with a firm of brokers by the name of Loeb-Alsberg & Co., members of the New York Stock Exchange, maintaining their offices in the City of New York. Between December 23rd and December 29th, 1930, said Fox on six different occasions delivered to Loeb-Alsberg & Co. the above referred to securities which came out of his vault, and at the time of each deposit received from Loeb-Alsberg & Co. by way of loan various sums aggregating $6,100,000.00, for which loan said Loeb-Alsberg & Co. held the securities deposited on that day. On each day on which a loan was received by Fox from Loeb-Alsberg & Co., he, as appears from the books of account of All Continent Corporation advanced the proceeds of said loan to All Continent Corporation by way of loan. All moneys so advanced to All Continent Corporation by the bankrupt were deposited in an account in the name of All Continent Corporation with the Commercial National Bank and Trust Co. of New York City. Immediately thereafter, and on six different occasions, instructions were given to the Com- [fol. 97] mercial National Bank and Trust Co. to purchase allegedly for the account of All Continent Corporation from Loeb-Alsberg & Co. the securities held by Loeb-Alsberg & Co. as collateral for the loans advanced to said Fox. After the securities originally owned by said Fox were acquired by All Continent Corporation, All Continent Corporation directed the Commercial National Bank and Trust Co. which had possession of the said securities, to deliver the same to the said Fox at his home 270 Park Avenue, New York City. The written instructions were later changed and pursuant thereto the Commercial National Bank and Trust Co. delivered to the said Fox at the Chemical Safe Deposit Co., 46th Street and Madison Avenue Branch the aforesaid securities which were placed by said Fox in the very same vault from which the securities originally came:

10. In addition to the securities acquired by All Continent Corporation in the manner above set forth, the said Fox claims to have assigned to All Continent Corporation his equity in several brokerage accounts of the aggregate value

of $841,884.61. Thereafter, All Continent Corporation allegedly in satisfaction of the advances of $6,100,000.00 made by Fox to it and in return for the aforesaid assignment to it of equities in brokerage accounts, issued and delivered to said Fox all of its common and preferred stock consisting of 69,400 shares of Series "A" preferred stock and 1,000 shares of common stock.

11. The record of said examination further shows that the stock originally issued to said William Fox, as aforesaid, still stands in his name on the books of All Continent Corporation although it is claimed that on January 28, 1931, he transferred, conveyed and assigned all his said stock in [fol. 98] All Continent Corporation to his wife, Eva Fox, pursuant to an alleged indenture of trust, a copy of which is attached to the foregoing bill of complaint and is marked Exhibit "A".

12. This deponent is informed from such source that he believes it to be true and therefore avers that said trust indenture was not delivered to said Eva Fox at or about the time it was allegedly made and executed and was not delivered to said Eva Fox for a long time thereafter, if at all.

13. This deponent is also informed and verily believes that the preferred and common stock of said All Continent Corporation which is the subject of said alleged trust indenture was not delivered to said Eva Fox, Trustee, at or about the time said trust indenture was allegedly made and executed, nor was said stock physically delivered to said trustee for a long time thereafter, if ever.

14. The aforesaid Herbert Leitstein, Secretary of said Fox, and Treasurer of said All Continent Corporation, and keeper of the books of both, testified in said examination that he had been paid a salary of $200.00 a week or more during the period from December, 1930, until now, and that all of said salary prior to about January 1, 1936, was paid to him by said Fox as compensation for keeping his, Fox's, books, and also the books of All Continent Corporation. Subsequent to about January 1, 1936, the salary of said Leitstein was paid by All Continent Corporation for and on account of his services in keeping its books as well as the books of the bankrupt.

15. During all the period from the time of the formation of All Continent Corporation until now, the above named

bankrupt and All Continent Corporation have jointly oc
[fol. 99] cupied the same offices and the books and records both of the said bankrupt and the said All Continent Corporation were kept and retained in the same office.

16. Said All Continent Corporation was formed as aforesaid for the purpose of dealing in securities and investments of all kinds and descriptions and particularly in stocks and bonds. In furtherance of that purpose All Continent Corporation kept and maintained accounts with various brokerage firms in the City of New York and elsewhere. Said All Continent Corporation opened accounts with brokers where the said Fox previously had and maintained accounts of his own for his personal transactions. With some of said brokers said Fox maintained an account not only in his own individual name, but also in the name of third parties, and particularly in the name of one Ben Leo, who is the brother-in-law of said Fox. With the brokers with whom said Fox maintained accounts in his own name and the name of said third parties, particularly said Ben Leo, said All Continent Corporation also opened accounts in its name and in the name of said third parties, particularly in the name of said Ben Leo. The brokerage concerns with whom the above named bankrupt and All Continent Corporation maintained most active accounts were Loeb-Alsberg & Co., Hirsch-Lillienthall & Co., Fenner & Beane, and Block, Maloney & Co.

17. Shortly after the formation of All Continent Corporation it appears by its minutes that appropriate action was taken by which said Fox was designated attorney-in-fact for All Continent Corporation, to act for and in its behalf in the purchase and sale of stocks, bonds and securities from and through the four brokerage firms last hereinbefore mentioned. In addition to the specific resolution [fol. 100] above referred to, the testimony heretofore given during said 21-a examination discloses that William Fox in fact did act as general manager for All Continent Corporation in all of its business transactions.

18. The testimony of said Leitstein given under 21a examination further discloses that said All Continent Corporation had as its legal representatives in the City of New York the law firm of Hirsh, Newman, Reass and Becker. This same firm of attorneys was also the legal representative of said Fox and said firm appears in the aforesaid

bankruptcy proceedings as attorney for said Fox, the bankrupt. Also said firm of attorneys, Hirsh, Newman, Reass, & Becker are allegedly the attorneys for Eva Fox, Belle Fox, Mona Fox, all of whom are members of the family of said William Fox. Said Benjamin Reass, a member of said firm of Hirsh, Newman, Reass and Becker, was President of All Continent Corporation from the time of its organization until August 12, 1935. Various other members of said firm, and particularly Emanuel Newman, Murry C. Becker and Daniel G. Rosenblatt, acted as Secretary of said Corporation at different times throughout the period of its existence.

19. It further appears from the testimony of said Leitstein that Mr. Fox, the above named bankrupt, acting in his capacity as general manager of All Continent Corporation or otherwise, from time to time and frequently gave instructions to him, the said Leitstein, respecting the drawing of checks on the bank account of All Continent Corporation and the payment of bills, both for the benefit of said All Continent Corporation and said bankrupt. Fox at no time received from said All Continent Corporation any salary or other compensation for the services which he ren- [fol. 101] dered to it as general manager as aforesaid, or otherwise.

20. During the period from the time of the formation of All Continent Corporation until now, all of the securities allegedly belonging to All Continent Corporation and not on deposit with brokers or as collateral for loans, were deposited and kept in a vault registered and recorded in the name of said William Fox at the Chemical Safe Deposit Company in the City of New York. During the period from the time of formation of All Continent Corporation until sometime in the year 1933, said William Fox had access to and the right to admission to said vault. From sometime in the year 1933 and thereafter said Leitstein and said Benjamin Reass, Esq., were given authority and the right to access to said vault for the purpose of depositing therein or removing therefrom securities. During the years 1930 to 1934 inclusive and until April of 1935, the rental charges for said vault were paid by Fox, the bankrupt. In April of 1935 All Continent Corporation for the first time paid the rental for said vault for the period from then until April, 1936. Said vault, however, remained registered and

recorded in the name of said William Fox, and continues to be registered in his name so far as the records show.

21. In the books of account of All Continent Corporation and particularly in the ledger there is kept and maintained an account designated as "Stock Investment Vault Account" wherein numerous purchases and sales of stocks and securities are recorded as having been delivered to and withdrawn from the vault which was registered and maintained in the name of said William Fox, the bankrupt as aforesaid.

[fol. 102] 22. Furthermore, said Leitstein during the course of his examination as aforesaid, admitted that he did from time to time use the books of All Continent Corporation for the purpose of posting entries in the books of said bankrupt.

23. The testimony thus far given in the 21-a examination proceedings discloses that subsequent to the acquisition by All Continent Corporation of the securities hereinbefore referred to from the bankrupt, and subsequent to January 28, 1931, the date of the alleged conveyance by the bankrupt to his wife of the shares of All Continent Corporation pursuant to the aforesaid alleged trust indenture, that there were numerous transactions and agreements between All Continent Corporation and said bankrupt, numerous transactions by All Continent Corporation for the benefit of said bankrupt, and numerous transactions by the bankrupt for All Continent Corporation. Illustrations of the types of transactions heretofore testified to or disclosed in the records of All Continent Corporation marked in evidence in the 21-a proceedings follow:

a. The cash book of All Continent Corporation reveals that from the date of its organization until the present time it has disbursed through bank accounts maintained by it a total of about $13,100.00. of which about $12,115,000.00 has been disbursed in connection with transactions with said Fox, the aforesaid bankrupt, transactions between All Continent Corporation and said Fox, or by All Continent Corporation for the benefit of said Fox. Insofar as any conclusion can be gathered by the disbursements made by All Continent Corporation, the main purpose of its organization was as a vehicle for said Fox to carry on his own private business affairs.

[fol. 103] b. The records of All Continent Corporation reveal that securities belonging to the bankrupt were put up as collateral for loans allegedly made to All Continent Corporation and securities belonging to All Continent Corporation were put up as collateral for loans allegedly made to the bankrupt by third parties. One transaction already disclosed by the testimony reveals a close intermingling of the affairs of said bankrupt and said All Continent Corporation. In connection with a loan of the National Safety Bank and Trust Co. of New York made to one Rubinstein and taken over by said Fox, there was deposited as additional collateral some 500 shares of Loew stock which when the loan was paid off was delivered by National Safety Bank & Trust Co. to a firm of brokers by the name of Loeb-Alsberg & Co. with which brokers both William Fox and All Continent Corporation had accounts. Originally the 500 shares of Loew stock were placed in the account of William Fox. The shares of stock, however, were claimed by All Continent Corporation. There is no entry in the books of William Fox to show that he delivered to National Safety Bank & Trust Co. said shares of Loew stock. Likewise there is no entry in the books of All Continent Corporation to show that it delivered to the National Safety Bank and Trust Co. the said shares of Loew stock. A pencil notation in the books of All Continent Corporation entered in respect to a purchase of 500 shares of Loew stock on a particular day identifies the said shares of stock purchased on that day as the stock which was delivered to the National Safety Bank and Trust Co. as additional collateral for the loan for which William Fox was obligated.

[fol. 104] c. Another instance of the close relationship existing between All Continent Corporation and said Fox, the bankrupt, is evidenced by entries appearing in the books of William Fox and books of All Continent Corporation with respect to a corporation known as Aronberg-Fried Co., Inc. According to the books of All Continent Corporation it advanced to Aronberg-Fried Co. the sum of $450,000.00. In 1933 Aronberg-Fried Co. made an application to the Maryland Casualty Company for a bond in connection with a contract which Aronberg-Fried Co. was about to enter into with the United States Government for the construction of a building in Washington. In connection with the application for said bond, Aronberg-Fried Co.

wrote a letter signed by all of its officers, directors and stockholders and also signed by Emanuel Newman, a member of the firm of Hirsh, Newman, Reass & Becker, as attorney in fact for William Fox. Said letter contained a statement as to the financial condition of Aronberg-Fried Co. and contained representations to the effect that William Fox had purchased from Aronberg-Fried Co. debentures in the sum of $450,000. The books of William Fox contained no entries to show that he had made any advances to Aronberg-Fried Co. or had purchased from Aronberg-Fried Co. any debentures, although the books of All Continent Corporation do show that it had advanced to Aronberg-Fried Co. the sum of $450,000. The letter above referred to contains an agreement by William Fox that he will not accept repayment from Aronberg-Fried Co. of the said $450,000. while the bond of the Maryland Casualty Co. is outstanding.

d. Also prior to the formation of All Continent Corpora- [fol. 105] tion, Fox, the aforesaid bankrupt, caused to be organized a corporation known as Transient Garage Corporation, the stock of which was owned by a corporation designated and known as Consolidated Biological Products, Inc., also a New York corporation. Said bankrupt was the owner of all of the stock of the latter corporation up until about December, 1935. The record of said 21-a examination disclosed that during recent years the bankrupt used the bank account of Transient Garage Corp. for his personal use and benefit and while so doing maintained no bank account in his personal name. The books of All Continent Corporation disclose that it frequently advanced moneys to said Transient Garage Corp. which were deposited in its account and from which said moneys were withdrawn for the purpose of paying obligations of said Fox, the bankrupt. The checks which were issued against the said account of Transient Garage Corporation by which moneys were withdrawn therefrom for the benefit of said Fox, were signed by him, the said Fox.

e. The records of All Continent Corporation further disclose that the firm of Hirsh, Newman, Reass and Becker acted as the clearing house for funds received by said firm from All Continent Corporation, from William Fox and from other sources. Entries in some of the books of All Continent Corporation indicated that the account was known as the Hirsh, Newman, Reass & Becker Trustee Ac-

count. Hirsh, Newman, Reass & Becker out of this one account made disbursements allegedly for the benefit of All Continent Corporation and allegedly for the benefit of said William Fox.

[fol. 106] f. Another illustration of the close relationship between said All Continent Corporation and said Fox appears from certain transactions which took place between said All Continent Corporation and a corporation by the name of Parkwood Corporation, which in turn had transactions with the bankrupt, All Continent Corporation, Transient Garage Corporation, Eva Fox the wife of the bankrupt, and others. Parkwood Corporation, according to the testimony adduced at said 21-a examination, was organized at or about the same time that All Continent Corporation was organized. It at no time owned any property or engaged in any business for which it needed money or from which it earned money. Until 1934 Parkwood Corporation engaged in no transactions of any kind. In 1934 Parkwood Corporation received various sums of money which according to its books were received by it by way of loan from All Continent Corporation, Belle Fox the daughter of the bankrupt, Mona Fox the daughter of the bankrupt, the bankrupt himself and others. During the years 1934 and 1935 all of the disbursements by Parkwood Corporation were in payment of obligations of the bankrupt for which he in turn was charged on the books of All Continent Corporation. During the year 1936 disbursements made by Parkwood Corporation were either for the bankrupt, or according to the books and records of the Parkwood Corporation, were for Eva Fox, the wife of the bankrupt. Identical disbursements listed in the records of Parkwood Corporation for the wife of the bankrupt and charged on the books of All Continent Corporation to the wife of the bankrupt, are charged on the books and records of the bankrupt to the bankrupt.

[fol. 107] g. Further illustration of the inter-wined relationship of the bankrupt and All Continent Corporation is evidenced by certain entries in the books of All Continent Corporation with respect to an account known as the Belle Fox account. Belle Fox is a daughter of William Fox, the bankrupt. According to the testimony adduced at said 21-a examination, said Fox had in his safe deposit box at the Chemical Safe Deposit Company in 1933 at least $200,000.

in cash. Said testimony further discloses that in 1933 Leitstein and Reass took out of the bankrupt's safe deposit box this sum of cash, part of which found its way in the bank account of All Continent Corporation. On the books and records of All Continent Corporation credit for the deposit of part of this cash is given to Belle Fox. Out of this cash All Continent Corporation paid obligations for said bankrupt for which on the books of All Continent Corporation he was charged. Claim has been made by the attorneys for said bankrupt and also by the witness Leitstein that the bankrupt made a gift of the $200,000 in cash to his daughter Belle Fox, who refused to loan any part of it except to All Continent Corporation, and that the transaction according to the entries on the books of All Continent Corporation was that Bell Fox loaned the money to All Continent Corporation which in turn loaned it to said Fox. There is no entry in any of the bankrupt's books to show any gift of $200,000 by the bankrupt to his daughter Belle Fox.

h. It has also been disclosed and appears as a fact that the bankrupt was the owner and possessor of all the stock of a corporation known as Namtaw Realty Co. Namtaw Realty Co. was the owner of real property. It had no [fol. 108] bank account. The books of All Continent Corporation disclosed that rents collected from tenants in possession of the real property owned by Namtaw Realty Co. were deposited in the bank account of All Continent Corporation and credited to William Fox. So far as has been disclosed and to the knowledge of this deponent Namtaw Realty Co. did not keep or maintain any books of account.

i. In addition to the above transactions said Fox, the bankrupt, acting on his own behalf entered into contracts with All Continent Corporation represented by him as aforesaid, and gave to All Continent Corporation as collateral security for obligations allegedly owing from the bankrupt to All Continent Corporation certain collateral. As a result of these agreements and the deposit of the aforesaid collateral, All Continent Corporation is alleged to have thereafter acquired said property on or about December 1935, by foreclosing the notes or other obligations allegedly given by said Fox, the bankrupt, to said All Continent Corporation.

24. During all the time after the formation of All Continent Corporation until about February, 1936, numerous advances of money were made by said All Continent Corporation to Eva Fox, the wife of the bankrupt, either directly or for her benefit, and said advances were charged to William Fox, the bankrupt, on the books of All Continent Corporation. This occurred at a time when said Eva Fox is alleged to have been the owner of all the stock of All Continent Corporation.

25. Also from said 21-a examination it appears at the [fol. 109] end of each month the bankrupt and said All Continent Corporation received statements of their accounts with the several brokers with whom they dealt as hereinbefore stated. It has been disclosed that items appearing on said brokerage statements of All Continent Corporation have been charged against the bankrupt on his books of account and vice versa. In fact, said Leitstein has testified during his examination as aforesaid that he could not complete entries in the books of said Fox the bankrupt until after he had gotten the brokerage statements respecting the accounts of All Continent Corporation with said brokers.

26. From the time of the formation and organization of All Continent Corporation down until the present time, its business has been confined to holding securities and assets originally transferred to it by said Fox, to transactions dealing in these securities and others purchased from time to time out of the funds realized from the sale of the original securities and from moneys borrowed thereon. In addition thereto said Corporation has been used as a conduit or medium for the business transactions of said Fox himself as well as other corporations which he owned and controlled.

27. From information which has so far been adduced at said 21-a examination, it does not appear that any payments of money were made to said Eva Fox, the wife of said William Fox, from the income received from said alleged trust created by him from the time of the creation thereof until December 30, 1935, at which latter time she, the said Eva Fox, is alleged to have received the sum of $25,000 salary for services rendered by her during the year 1935. No provision for the payment of said sum was made by said All Continent Corporation prior to December, 1935.

[fol. 110] 28. At or about August, 1935, Eva Fox, the wife of said William Fox, Belle Fox and Mona Fox, daughters of said William Fox, are alleged to have become the directors of said All Continent Corporation. Also at or about said time said Eva Fox is alleged to have become President and Treasurer of said Corporation, and Mona Fox the Secretary and Belle Fox the Vice-President respectively thereof. There were no formal meetings of the directors of said All Continent Corporation. It has been disclosed in said 21-a examination that the minutes of said corporation were drawn and prepared in the office of said attorneys Hirsh, Newman, Reass & Becker, and presented to the respective directors for signature. Such meetings did not occur at regular intervals. Mona Fox and Belle Fox both testified during said 21-a examination that neither of them had at any time taken any active part in the affairs of said corporation. They the said Mona Fox and Belle Fox did sign minutes of said corporation from time to time as well as other documents, but during their said examination they admitted that they were not conversant with the matters recorded in any of the documents which they signed and that they signed the same merely because they were asked to do so by their parent.

29. It has also been disclosed during said 21-a examination that those persons who acted as directors and officers of said All Continent Corporation prior to August, 1935, signed and delivered to said All Continent Corporation or its representative undated resignations from the offices to which they had been elected.

30. On February 3, 1936, said William Fox is alleged to have entered into agreement with said All Continent Cor-[fol. 111] poration whereby it is claimed that he sold and conveyed certain property and assets enumerated therein to said All Continent Corporation and a true copy of said agreement is attached to the foregoing bill of complaint and marked Exhibit "B".

31. Also on May 23, 1936, said William Fox is alleged to have entered into agreement with said All Continent Corporation whereby it is claimed that he the said Fox conveyed and transferred to said All Continent Corporation certain shares of Building and Loan stock enumerated therein which were theretofore the property of said William Fox, but that thereby said All Continent Corporation be-

came the owner and possessor thereof. A true copy of said agreement is attached to the foregoing bill of complaint and marked Exhibit "C". By virtue of the sale of said collateral security and the transfer of property enumerated in said agreements, Exhibits "B" and "C", said William Fox was divested of all property of every kind and description which was of any importance or value and he was thereby denuded of all the vast wealth of which he had theretofore been possessed and which he had theretofore enjoyed.

32. In and by the voluntary petition in bankruptcy which was filed by said William Fox resulting in his adjudication as a bankrupt, said Fox listed liabilities in the aggregate amount of $9,535,261.91 and assets of a total or aggregate value of $1,590,000.00. Of said liabilities it is averred in said schedules that said Fox is indebted to said All Continent Corporation in the total sum of $417,258.19. From information which has come to this deponent from a source such that he believes it to be true, it would appear that said averment in said schedules is incorrect and in error and that said William Fox is not indebted to said All Continent [fol. 112] Corporation in any amount. Of said total assets shown in said schedules, said William Fox represents that he is possessed of real estate of the total aggregate value of $1,400,000.00, of bills, promissory notes and securities of the total value of $190,000.00 and of cash on hand in the total sum of $100.00. The real estate which said Fox avers to be the value of $1,400,000 is referred to in his said schedules in the following manner: "Undivided one-half interest in property located on Market Street, in the City of San Francisco, State of California, owned by the petitioner, together with Capital Company, a California corporation, the other one-half undivided interest being owned by the Capital Company, a California corporation. The said undivided one-half interest of petitioner being subject to a deed of trust given to secure the payment of moneys loaned to the petitioner in connection with the acquisition of this property. The said deed of trust is a lien on the undivided one-half interest of your petitioner in the sum of $470,000. with interest. Estimated value of undivided one-half interest of petitioner which was acquired at an original cost of approximately $1,400,000. over and above the liens, mortgages and encumbrances thereon, and subject to the community

interest of Eva Fox, as wife, is subject to possible defeasance of petitioner's title to foregoing real estate by reason of a purported sale thereof, under a deed of trust thereon, held on May 11, 1936, which sale petitioner claims was illegal and in violation of his rights." It is doubtful whether or not said William Fox is the owner of said interest in said real estate as alleged by him, and it is also doubtful whether or not said real estate is of the value alleged, and in order to determine the interest of said Fox in said real estate it is necessary that litigation be instituted in the State of California for the purpose of determining said ownership and the value thereof. The bills, promissory [fol. 113] notes and securities which are listed in the said bankruptcy schedules total $190,000. consisting of four notes of C. H. Huston, all of which are long over due and the value of said notes is very doubtful. In fact I am informed that said Huston is at the present time without property or means from which said indebtednesses might be recovered, and also I have been unable thus far to obtain the whereabouts of said Huston. A careful analysis of the schedules of said bankrupt, William Fox, discloses that at the time of the filing thereof and his adjudication in bankruptcy, he, the said Fox, was to all intents and purposes without property of any value from which his various debts and liabilities might be paid and satisfied.

33. Said schedules in bankruptcy filed by said Fox also disclose that he paid a total sum of $7500.00 cash to counsel for services rendered or to be rendered in connection with said bankruptcy proceedings, and that sum was so paid to the following: Messrs. Bourgeois & Coulomb $3,000.00, Robert P. Levis, Esq., of New York City, $2500., and Messrs. Hirsh, Newman, Reass & Becker of New York City $2,000.00. Certain members of the law firm of Hirsh, Newman, Reass & Becker, and particularly Murry C. Becker, Esq., and Daniel G. Rosenblatt, Esq., either or both of them, have continuously been in attendance upon the hearings had under said 21-a examination and have actively participated therein as the representative of the bankrupt regardless of who was being examined. They have throughout said examination frequently and repeatedly interposed objection to questions which have been asked of witnesses as well as objections to various other things that have been urged to be done throughout said

examination. The persons thus far examined under said [fol. 114] 21-a examination are Herbert Leitstein, Joseph Hart, who acted as Leitstein's Assistant bookkeeper, Mona Fox and Belle Fox, both daughters of the bankrupt, Murry C. Becker, Esq., and Daniel G. Rosenblatt, Esq., both members of the firm of Hirsh, Newman, Reass & Becker, attorneys for bankrupt, Albert M. Greenfield and one Blasband who appeared to testify from the records of Bankers Security Corporation and Bansecor Corporation, both of the State of Pennsylvania.

34. I am informed from such source that I believe it to be true and therefore aver that said All Continent Corporation was formed and organized by said William Fox for the express purpose of defrauding his creditors then existing as well as those to whom said Fox thereafter became indebted; that said William Fox and said All Continent Corporation are one and the same; that the real object sought to be attained by said William Fox in the formation and organization of said All Continent Corporation was to thwart his, Fox's, creditors, and to retain for himself and his family the full and unmolested enjoyment of all his assets in fraud of his creditors; and that said William Fox formed and organized All Continent Corporation and used its corporate form for the purpose of evading the law and perpetrating a fraud upon his creditors existing at the time of the formation thereof as well as those to whom he thereafter became indebted, and that the legal entity of said corporation was interposed by him so as to defeat justice.

35. I am further informed from such source that I believe to be true and therefore aver that the formation and organization of All Continent Corporation, the transfer and assignment of assets by said Fox to said corporation [fol. 115] in return for the issuance and delivery of the capital stock of said corporation to said Fox, the making of said trust indenture by said Fox to said Eva Fox, Trustee, the foreclosure sale of the collateral of said William Fox deposited in connection with the note which said Fox delivered to said All Continent Corporation, the assignment and transfer by said Fox of the securities named in said agreement of February 3, 1936, the transfer and as-

signment by said Fox to said corporation of the assets named in said agreement of May 23, 1936, as well as all of the other things done by and between said Fox and said All Continent Corporation as enumerated and set out in the foregoing bill of complaint, were each and every one of them a part of a general scheme or plan devised and put into effect by said William Fox in order to hinder, delay and defraud his creditors and to retain for himself and his family in fraud of his creditors the full and unmolested enjoyment of all his assets.

36. I am further informed from such source that I believe it to be true and therefore aver that Eva Fox, the wife of the bankrupt, and Belle Fox and Mona Fox, daughters of said bankrupt, were in full and complete knowledge at all times of the things done as complained about in the foregoing bill of complaint and that they, the said Eva Fox, Belle Fox and Mona Fox, either sat by and permitted said things to be done by said William Fox, or assisted in the doing thereof, all in fraud and to the damage of the creditors of said William Fox, and particularly is this so in connection with the organization of said All Continent Corporation, the creation of the alleged trust of the capital stock of All Continent Corporation, the use of said All Continent Corporation for the personal benefit and gain of the said William Fox, the foreclosure sale of the collateral of said Fox deposited with the note which said Fox had [fol. 116] delivered to said All Continent Corporation, and the transfer of the assets of said Fox by means of said agreements of February 3rd and May 23, 1936.

37. I am also informed from such source that I believe it to be true and therefore aver that as a result of the transfer by said Fox to said All Continent Corporation of assets which were theretofore owned by him and which transfer was made between the dates of December 23rd and December 29th, 1930, and the assignment to said All Continent Corporation of said brokerage credits at or about the same time, and also as a result of said trust indenture dated January 28, 1931, said William Fox became insolvent and thereafter continued to be insolvent.

38. Also I am informed from such source that I believe it to be true and therefore aver that none of the attempted transfers and assignments of assets by said William Fox

to said All Continent Corporation were ever completely and legally consummated and that this is particularly so insofar as the attempted assignment and transfer of December, 1930, the assignment to Eva Fox, Trustee, in January, 1931, the sale of the collateral of said William Fox in December 1935, and the assignment by virtue of the agreements dated February 3rd and May 23rd, 1936, are concerned.

39. Said All Continent Corporation maintains its business office in the City of Atlantic City, Atlantic County, New Jersey, and all of its books of account, records and property of every kind and description are maintained there.

40. Said William Fox, Eva Fox, Belle Fox and Mona Fox are all residents of said Atlantic City.

[fol. 117] 41. Some time prior to the adjudication of said Fox as a bankrupt as aforesaid, he assigned, transferred and conveyed certain real estate belonging to him and situate at Woodmere, Long Island, in the State of New York, to said Eva Fox, his wife. Said real estate was of considerable extent and of great value.

42. Both said Fox and Eva Fox, his wife, claim and allege the transfer of said Woodmere properties took place on or about April 14, 1930. However, I am informed from such source that I believe it to be true and therefore aver that the said transfer was not had and consummated at or about said time, but in fact was consummated at a much later date, if at all.

43. Also it is claimed and alleged by said Fox that on or about August 20, 1931, he paid and satisfied a certain mortgage debt or obligation amounting to the sum of $20,000 which was a lien upon the aforesaid Woodmere property and that the payment thereof occurred after the transfer of said property to said Eva Fox. The sum so required to pay off and satisfy said mortgage was paid by said Fox from his personal funds.

44. Said Fox also claims and alleges that on or about January 8, 1931, he assigned and transferred to said Eva Fox, his wife, 500 shares of the preferred stock of Aronberg Fried Company and 200 shares of the stock of Whip-Poor-Will Corporation which theretofore belonged to and was owned by him and which said stocks then and there were of great value.

45. Also it is claimed and alleged by said Fox that on or about August 5, 1931, he assigned and transferred to said [fol. 118] Eva Fox, his wife, 857 shares of the stock of Fox Westwood Corporation and 750 shares of Fox Hills Corporation which theretofore belonged to and was owned by him and which said stocks then and there were of great value.

46. Said Fox also alleges and claims that on or about January 4, 1933, he withdrew from his personal funds the sum of $32,684.00 with which he paid for and purchased 327 shares of the stock of Fox Westwood Corporation which were allegedly issued and delivered to said Eva Fox the wife of said William Fox, at some time during the year 1932.

47. Said Fox alleges and claims that said assignments and transfers and all of the things set out in the foregoing paragraphs hereof numbered 41 to 46, both inclusive, were intended to be and were in fact gifts from him to his said wife.

48. Said assignments and transfers of said property, money and stocks made by said Fox to Eva Fox, his wife, were made without any real, valuable or adequate consideration passing from her to him.

49. I am informed from such source that I believe it to be true and therefore aver that said assignments and transfers made by said Fox to his said wife were not in fact made at the times alleged and claimed by him, but were in fact made at much later times; that said assignments and transfers were not in fact completely made and fully consummated; that said assignments and transfers were made by said Fox to his said wife for the express purpose of defrauding his creditors then existing as well as those to whom he thereafter became indebted; that the real object sought to be attained by said Fox in making said as- [fol. 119] signments and transfers to his said wife was to thwart his creditors and to retain to himself and to his said wife the full and unmolested enjoyment of said assets and property in fraud of his creditors existing at the time and those to whom he thereafter became indebted; that said assignments and transfers so made as aforesaid by said Fox to his said wife were made in covinous agree-

ment between him and her to hinder, delay and defraud the creditors of said William Fox and to retain for himself and his said wife the full and unmolested enjoyment of all his assets in fraud of his creditors then existing and those to whom he thereafter became indebted; that said Fox made said assignments and transfers at a time when he was insolvent and unable to pay and satisfy his just debts and obligations; that as a result of said assignments and transfers, he, the said William Fox, became insolvent and particularly is this true by reason of the transfer of the assets of said Fox to said All Continent Corporation at or about the same time as said assignments and transfers were made to said Eva Fox as set out in the first part of the foregoing bill of complaint; and that said assignments and transfers were each and every one of them, a part of a general scheme or plan devised and put into effect by said William Fox in order to hinder, delay and defraud his creditors and to retain to himself and his said wife and other members of his said family the full and unmolested enjoyment of all his assets in fraud of his creditors then existing as well as those to whom he thereafter became indebted.

50. Also some time prior to the adjudication of said Fox as a bankrupt as aforesaid he claims to have assigned and transferred to Belle Fox, his daughter, 905 of the voting trust certificates of Bankers Security Corporation and 70 shares of the common stock of said Bankers Security Cor-
[fol. 120] poration which said assignment or assignments, transfer or transfers, are alleged to have taken place at or about January, 1931.

51. Also said Fox claims to have paid and turned over to said Belle Fox the sum of $200,000.00 in cash withdrawn from his personal funds and that said payment was made at or about January, 1932.

52. Sometime during the years 1928 and 1929 said Fox alleges and claims that he assigned and transferred to said Belle Fox, his daughter, 160 shares of the preferred stock of said Bankers Security Corporation which theretofore belonged to and was owned by him.

53. Said Fox alleges and claims that said assignments and transfers and all of the things set out in the foregoing

paragraphs hereof numbered 50 to 52, both inclusive, were intended to be and were in fact gifts from him to his said daughter, Belle Fox.

54. I am informed from such source that I believe it to be true and therefore aver that said assignments and transfers of said property and money by said Fox to Belle Fox, his daughter, were made without any real, valuable or adequate consideration passing from her to him; that said assignments and transfers were not in fact made at the times alleged and claimed by said Fox, but were in fact made at much later times; that said assignments and transfers were not in fact completely made and fully consummated; that said alleged assignments and transfers of property and money were made by said Fox to his said daughter, Belle Fox, for the express purpose of defrauding his creditors then existing as well as those to whom he thereafter became indebted; that the real object sought to be attained by said [fol. 121] Fox in making said assignments and transfers to his said daughter was to thwart his creditors and to retain to himself and to his said daughter the full and unmolested enjoyment of said assets and property in fraud of his creditors existing at the time and those to whom he thereafter became indebted; that said assignments and transfers so made as aforesaid by said Fox to his said daughter were made in covinous agreement between him and her to hinder, delay and defraud the creditors of said William Fox and to retain for himself and his said daughter the full and unmolested enjoyment of all his assets in fraud of his creditors then existing and those to whom he thereafter became indebted; that said Fox made said assignments and transfers at a time when he was insolvent and unable to pay and satisfy his just debts and obligations; that as a result of said assignments and transfers he, the said William Fox, became insolvent and particularly is this true by reason of the transfer of the assets of said Fox to said All Continent Corporation at or about the same time as said assignments and transfers were made to said Belle Fox as set out in the first part of the foregoing bill of complaint; and that said assignments and transfers were, each and every one of them, a part of a general scheme or plan devised and put into effect by said William Fox in order to hinder, delay and defraud his creditors and to retain to himself and his said daughter and other members of his said family the full and unmolested enjoyment of all his assets in fraud of his credi-

tors then existing and those to whom he thereafter became indebted.

55. Also some time prior to the adjudication of said Fox as a bankrupt as aforesaid he claims to have assigned and transferred to Mona Fox, his daughter, 160 shares of the preferred stock of Bankers Security Corporation which [fol. 122] said assignment and transfer is alleged to have taken place during the years 1928 and 1929.

56. Also said Fox claims to have paid and turned over to said Mona Fox the sum of $139,500.00 in cash withdrawn from his personal funds and that said payment was made at or about March 2, 1932.

57. Said Fox alleges and claims that said assignments and payment of money set out in the foregoing paragraphs hereof numbered 55 and 56, both inclusive, were intended to and were in fact gifts from him to his said daughter, Mona Fox.

58. I am informed from such source that I believe it to be true and therefore aver that said assignments and transfers of said property and money by said Fox to Mona Fox, his daughter, were made without any real, valuable or adequate consideration passing from her to him; that said assignments and transfers were not in fact made at the times alleged and claimed by said Fox, but were in fact made at much later times; that said assignments and transfers were not in fact completely made and fully consummated; that said alleged assignments and transfers of property and money were made by said Fox to his said daughter, Mona Fox, for the express purpose of defrauding his creditors then existing as well as those to whom he thereafter became indebted; that the real object sought to be attained by said Fox in making said assignments and transfers to his said daughter was to thwart his creditors and to retain to himself and to his said daughter the full and unmolested enjoyment of said assets and property in fraud of his creditors at the time and those to whom he thereafter became indebted; that said assignments and transfers so made as [fol. 123] aforesaid by said Fox to his said daughter were made in covinous agreement between him and her to hinder, delay and defraud the creditors of said William Fox and to retain for himself and his said daughter the full and unmolested enjoyment of all his assets in fraud of his creditors then existing and those to whom he thereafter became

indebted; that said Fox made said assignments and transfers at a time when he was insolvent and unable to pay and satisfy his just debts and obligations; that as a result of said assignments and transfers he, the said William Fox, became insolvent and particularly is this true by reason of the transfer of the assets of said Fox to said All Continent Corporation at or about the same time as said assignments and transfers were made to said Mona Fox as set out in the first part of the foregoing bill of complaint; and that said assignments and transfers were, each and every one of them, a part of a general scheme or plan devised and put into effect by said William Fox in order to hinder, delay and defraud his creditors and to retain to himself and his said daughter and other members of his said family the full and unmolested enjoyment of all his assets in fraud of his creditors then existing and those to whom he thereafter became indebted.

59. This action is instituted herein by and with the approval of the U. S. District Court for the District of New Jersey by order entered in said bankruptcy proceedings on Oct. 13, 1936.

Hiram Steelman.

Sworn and subscribed to before me this 13th day of October, 1936. James N. Butler, M. C. C. of N. J.

[fol. 124] A true copy. Wm. Elmer Brown, Jr., Solicitor for Complainant.

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In Chancery Court of New Jersey

Between

Hiram Steelman, Trustee for William Fox, a Bankrupt, Complainant,

and

All Continent Corporation, William Fox, Eva Fox, Belle Fox, Mona Fox, William Fox Tauszig and William Fox Schwartz, Defendants

On Bill, etc.

Order to Show Cause

Hiram Steelman, Trustee for William Fox, a bankrupt, having filed his bill of complaint herein, duly verified,

wherein it appears among other things that All Continent Corporation, one of the above named defendants, is in possession of certain property and assets which it claims to own but which in fact it is alleged are the property and assets of said William Fox, the aforesaid bankrupt, that said assets and property were transferred by said Fox to said All Continent Corporation in fraud of his creditors then existing and those to whom he thereafter became indebted; that the transfer of said property and assets to said All [fol. 125] Continent Corporation was in furtherance of a general scheme of said William Fox, the bankrupt, to hinder, delay and defraud his said creditors, and to assure to him and to his family the unmolested benefit and possession thereof; and that said transfer of said property and assets to said All Continent Corporation was made at a time when said William Fox, the bankrupt, was insolvent and also that as a result of said transfer said Fox became insolvent, all in fraud of his said creditors.

And it further appearing from said duly verified bill of complaint that said William Fox prior to his adjudication in bankruptcy, transferred certain of his property and assets to each of the defendants, Eva Fox, Belle Fox and Mona Fox, all of which was allegedly done in fraud of the creditors of him, the said William Fox; that said transfers to said Eva Fox, Belle Fox and Mona Fox were made without any real, valuable or adequate consideration; that said transfers so made by said William Fox to said Eva Fox, Belle Fox and Mona Fox, were made at a time when said Fox was in fact insolvent and that he became insolvent as a result thereof; that said transfers of property and assets by said Fox to said Eva Fox, Belle Fox and Mona Fox were all in furtherance of a general scheme of the said Fox in which they, the said Eva Fox, Belle Fox and Mona Fox joined, to hinder, delay and defraud the creditors of him, the said William Fox, and to assure to him, the said Fox, and said Eva Fox, Belle Fox and Mona Fox and other members of his family the unmolested use and benefit of said property and assets.

And said Complainant herein among other things having prayed for relief that will assure the preservation of said property and assets in the form in which they now are until such time as the matters in issue in this suit can be finally determined;

[fol. 126] It is, on this 13th day of October, A. D., 1936, Ordered that All Continent Corporation, William Fox, Eva Fox, Belle Fox and Mona Fox, they and each of them, show cause before this Court on Tuesday, the 10th day of November, 1936, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers, Atlantic City, why they should not be enjoined and restrained from selling, assigning, transferring, mortgaging or otherwise disposing of or encumbering said assets and property so acquired by them from said William Fox in the manner set forth in the bill of complaint filed in this cause until the further order of this Court, or until the matters and thinks in issue herein shall be finally determined.

And it is further Ordered that said defendants show cause at the time and place aforesaid why this Court should not appoint a receiver to take and hold in his possession all of the assets acquired by them from said William Fox in the manner set forth in the bill of complaint filed in this cause, wherever the same may be found and whatever the same may be, to manage, control and preserve the same under the supervision of this Court until the matters and things herein in issue can be finally determined.

And it is further Ordered that in the meantime said All Continent Corporation, William Fox, Eva Fox, Belle Fox and Mona Fox be and they hereby are enjoined and restrained from selling, assigning, transferring, mortgaging or otherwise disposing of or encumbering any of said assets until the further order of this Court.

And it is further Ordered that a copy of this Order to Show Cause, together with a copy of the bill of complaint and affidavit attached thereto, all of which may be uncertified but marked "A true copy" by the solicitor of the [fol. 127] complainant, be served upon said All Continent Corporation by serving the same upon an officer or director thereof, and upon the defendants William Fox, Eva Fox, Belle Fox and Mona Fox by serving the same upon each of them personally or by handing a copy thereof to some member of their family above the age of fourteen years, at their usual place of residence within 5 days from the date hereof.

Luther A. Campbell, C.

Respectfully advised: W. F. Sooy, Vice Chancellor.

IN DISTRICT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA, JUNE TERM, 1936

In Equity. No. 9533

ALL CONTINENT CORPORATION, Plaintiff,

vs.

JOHN S. WYNN, JAMES H. WYNN, HAROLD A. LONGWELL, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, [fol. 128] J. Maurice Wynn and James A. Longwell, Co-partners Trading under the Firm Name of J. W. Sparks & Company, Capital Company and Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt, Defendants

ANSWER OF JOHN S. WYNN, JAMES H. WYNN, HAROLD A. LONGWELL, E. SCHUYLER JACKSON, JR., RUSSELL R. HIRES, ARCHIBALD W. AUSTIN, JAMES B. BORDEN, FREDERICK W. WINTERBERG, J. MAURICE WYNN AND JAMES A. LONGWELL, CO-PARTNERS, TRADING UNDER THE FIRM NAME OF J. W. SPARKS & CO., TO THE BILL OF COMPLAINT

To the Honorable, the Judges of the United States District Court for the Eastern District of Pennsylvania:

John S. Wynn, one of the defendants in the above-entitled matter and a co-partner in the firm of J. W. Sparks & Co., files this Answer on behalf of himself and the other defendants herein named, and says: That the other defendants, viz: James H. Wynn, Harold A. Longwell, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice Wynn and James A. Longwell, deponent's co-partners, trading under the name of J. W. Sparks & Co., have authorized your deponent to come and file this, their Answer to the Bill of Complaint filed by the plaintiff in this proceeding, and the [fol. 129] deponent and said other defendants, saving and reserving unto themselves, and each of them, all benefit and advantage of exceptions to the manifold errors, uncertainties and other imperfections in the plaintiff's Bill of Complaint contained, for answer thereto, or to so much and such parts thereof as the defendants are advised it is material or necessary for them to answer.

Respectfully Showeth:

1. The defendants admit the allegations of Paragraph (1) of the Bill of Complaint and aver that they have no knowledge of any office or place of business which may be maintained by the plaintiff in any jurisdiction other than in the State of Delaware.

2. The defendants admit the allegations of Paragraph (2) of the Bill of Complaint and aver that the firm of J. W. Sparks & Co. is a limited partnership association, formed in accordance with the provisions of an Act adopted by the Legislature of the State of Pennsylvania, and approved April 12th, 1917, P. L. 55, and that J. Maurice Wynn and James A. Longwell are limited partners of said co-partnership, as will more fully appear by the Certificate of Formation of Limited Partnership filed by said defendants in accordance with the provisions of the aforesaid Act and recorded in the Office for the Recording of Deeds in and for the City and County of Philadelphia, in Partnership Book No. 15, Page 388, &c.

3. The defendants have no knowledge of the allegations of Paragraph (3) of the Bill of Complaint and therefore demand proof thereof upon the trial of this case.

4. The defendants have no knowledge of the allegations of [fol. 130] Paragraph (4) of the Bill of Complaint and therefore demand proof thereof upon the trial of this case.

5. The defendants admit the allegations of Paragraph (5) of the Bill of Complaint, and aver that the property or securities mentioned in Plaintiff's Bill of Complaint are located in the City and County of Philadelphia in the possession of the defendants, as hereinafter more fully set forth.

6. The defendants admit the allegations of Paragraph (6) of the Bill of Complaint.

7. The defendants admit the allegations of Paragraph (7) of the Bill of Complaint, but aver that the oral agreement set forth in said Paragraph is subject to the terms and provisions of two certain written agreements commonly known as "margin" and "customers'" agreements, each dated January 7th, 1936 and executed by the plaintiff. The defendants have attached hereto a copy of said "margin" agreement which is marked "Exhibit A", and a copy of said "customers'" agreement which is marked "Exhibit

B", and the defendants aver that the said agreements were delivered to the defendants when the plaintiff opened its account with the defendants on or about January 30th, 1936.

8. The defendants admit the allegations of Paragraph (8) of the Bill of Complaint.

9. The defendants admit the allegations of Paragraph (9) of the Bill of Complaint and the defendants aver that the securities delivered to and accepted by them for the [fol. 131] account of the plaintiff from time to time were accepted for and on behalf of, and as the property of the plaintiff herein.

10. The defendants admit the allegations in Paragraph (10) of the Bill of Complaint.

11. The defendants admit the allegations in Paragraph (11) of the Bill of Complaint.

12. The defendants admit the allegations in Paragraph (12) of the Bill of Complaint.

13. The defendants admit the allegations of Paragraph (13) of the Bill of Complaint and allege that the Motion which they filed to Vacate said Third Party Subpœna also presented certain legal questions therein mentioned; that said Motion to Vacate was decided adversely to the defendants, as will appear by an Opinion filed by the United States Circuit Court of Appeals for the Second Circuit, an extract from which Opinion appears in Paragraph (13) of the Bill of Complaint. That Harold A. Longwell, a member of the firm of J. W. Sparks & Co. and one of the defendants, was examined on September 22nd, 1936, pursuant to the Third Party Subpœna issued to the defendants and as required by said Opinion; that in said examination counsel for Capital Company inquired thoroughly into the business dealings between the defendants and All Continent Corporation, and the said Harold A. Longwell was also examined concerning any business dealings between the defendants and some sixty-four (64) individuals or corporations.

14. The defendants admit the allegations of Paragraph (14) of the Bill of Complaint, and aver that they have not been discharged in the proceedings of Capital Company vs. [fol. 132] William Fox, wherein said Third Party Subpœna was issued and served upon them. Defendants fur-

ther aver that said subpœna has prevented them from transferring or disposing of the account of All Continent Corporation and the securities therein contained which are held subject to a debit balance payable to the defendants and which debit balance as of October 14th, 1936, amounted to $308,764.97. The defendants further aver that there is a likelihood that the defendants may sustain a substantial loss in the event the issues raised by this proceeding are not expeditiously determined, or in the event the various securities now held for the account of All Continent Corporation are subsequently adjudged to be the property of the said William Fox.

15. The defendants admit the allegations of Paragraph (15) of the Bill of Complaint and aver that strenuous efforts are being made by the Capital Company and Hiram Steelman, Trustee of the Estate of William Fox, Bankrupt, in various proceedings, to prove that the securities held by the defendants for the account of All Continent Corporation are really the property of the said William Fox.

16. The defendants admit the allegations of Paragraph (16) of the Bill of Complaint, and the defendants aver that the plaintiff in this proceeding has been restrained from proceeding herein against Hiram Steelman, Trustee as aforesaid, by reason of a restraining order entered on October 7th, 1936, by the Honorable John Boyd Avis, Judge of the United States District Court for the District of New Jersey. The defendants therefore pray that Your Honorable Court should take jurisdiction of this matter and decide the issues raised by this proceeding because the securi- [fol. 133] ties are within the jurisdiction of this Court; the defendants will in all likelihood be required to appear in a number of jurisdictions and be subject to various orders and decrees which may be inconsistent one with the other and because it is necessary that the rights of all parties be promptly adjudicated so as to prevent the possibility of a loss falling upon the defendants who have no interest in said account excepting in accordance with the terms and provisions of said agreements (see Exhibits "A" and "B" hereof) and in the debit balance of said account which is payable to the defendants.

17. The defendants aver that all securities received by them for the account of All Continent Corporation were

received and accepted pursuant to resolutions adopted by the Board of Directors of All Continent Corporation and instructions received from the duly authorized officers thereof. The defendants have no knowledge that any securities in said account are the property of the said William Fox, and the defendants believe, and therefore, aver, that said securities, and all equity in said account, are the property of All Continent Corporation. The defendants request Your Honorable Court to take the testimony of the various claimants and, after hearing, enter such a decree as will properly protect the defendants herein.

18. The defendants admit the allegations of Paragraph (18) of the Bill of Complaint and aver that they have refused to transfer said account or to permit the All Continent Corporation to have any dealings in connection therewith because said Third Party Subpœna operates as a restraining order, which may place a liability upon the defendants for any loss and/or fine and imprisonment, or [fol. 134] either, as and for contempt, in the event any securities in said account are transferred and subsequently adjudged to be the property of the said William Fox.

19. The defendants admit the allegations of Paragraph (19) of the Bill of Complaint.

20. The defendants admit the allegations of Paragraph (20) of the Bill of Complaint. The defendants aver that said Third Party Subpœna and Plaintiff's demand for the delivery of the securities in its account with the defendants, accompanied by an offer to pay the debit balance thereof, have placed the defendants in the position of being required to prove the ownership of the securities which are held by them in accordance with the aforesaid agreements for the account of the All Continent Corporation, and they will therefore be required to assume a burden which cannot be properly undertaken by them; that said securities are subject to changing market conditions which may require the sale thereof to protect the interest of the defendants and any other party properly interested therein, and that said Third Party Subpœna may cause irreparable damage to the defendants if the defendants are not relieved from the restraint thereby imposed. That defendants have entered into said agreements with All Continent Corporation in good faith and have at all times believed that the securi-

ties in said account were actually the property of the plaintiff herein and the defendants therefore advanced substantial sums of money to All Continent Corporation and held said securities as collateral for their said advancements and interest due, and to become due, thereon.

Wherefore the defendants join in the prayer of the Bill [fol. 135] of Complaint and request Your Honorable Court to assume jurisdiction of the parties and the subject matter therein mentioned, so that the interests of all parties in said account of All Continent Corporation with the defendants, subject, however to the rights of the defendants therein, may be properly determined and adjudicated, and the defendants dismissed by Your Honorable Court from this suit, together with their costs.

And so Answers

John S. Wynn, James H. Wynn, Harold A. Longwell, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice Wynn, James A. Longwell, Co-partners Trading under the Firm Name of J. W. Sparks & Co., by John S. Wynn. Henry L. Schimpf, Jr., Attorney for said Defendants.

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EXHIBIT "A" TO ANSWER

J. W. Sparks & Co.:

In consideration of your acting as my brokers for the purchase and sale of securities and/or contracts for commodities, and in opening or continuing an account or accounts for me, in which such transactions and all other of [fol. 136] my dealings, with you will be recorded, I, being of full age, agree with your firm as the same from time to time may be constituted, that:

All purchases and sales made for me shall be subject to the rules and customs of the Exchange or Market (and its Clearing House, if any) whereon such transactions are had, and when I do not immediately pay in full for securities and/or contracts which you may purchase for me, or immediately deliver certificates for the securities, and/or contracts which you may sell for me, and have the assistance of your facilities and credit in connection therewith, then at all times all securities (whether purchased for or de-

posited by me) and all equities in my account or accounts are pledged to you for all moneys advanced for and/or to me, and also shall stand as a protection to you for all liabilities incurred by the sale of any securities and/or contracts wherein delivery to you by me is pending and due and for any other obligations to you of whatever kind.

At any time, without notice to me, you may rehypothecate the securities so pledged by me, in any of your loans, separately or in common with other securities, and without limitation as to the amount of such loans, and you may register such securities in your own name and/or lend them to yourselves as brokers for delivery of like securities for the account of your other customers, and/or for re-lending them to other brokers. In all cases you may replace the certificates so used by other certificates of a similar issue and amount, but without the necessity of you at all times retaining such like securities in your possession and/or control for delivery.

I shall promptly provide and/or establish at least the required margin on any of my transactions wherein the Federal regulations limit the extension of credit; and at all times shall maintain in my account or accounts equity [fol. 137] or margin in accordance with Federal and/or New York Stock Exchange, and/or other Exchange requirements which may be applicable; but in all cases, whenever any such prescribed margin does not in your opinion afford you sufficient protection, then I shall provide and/or establish, promptly and/or maintain such additional equity or margin as will be satisfactory to you. If at any time any securities carried or held for me are unsatisfactory to you as loan collateral, then, without notice to me, you may disregard such securities in your determining equity and margin in any of my accounts with you. I shall be directly responsible to you for my account or accounts, whether designated by name or number or otherwise, and whether held individually or jointly with others. At any time in your discretion, you may without notice to me, apply and/or transfer any or all securities and/or contracts, and/or credits and equities interchangeably between any of my accounts, and/or from any of my accounts to any account carried by you which I have guaranteed in writing.

Upon your demand, I will take up or close my account or accounts by complete settlement of all indebtedness and

obligations due you thereon. You may, however, at any time you deem it necessary for your protection, at your discretion sell, without notice to me of your intent, and of time and place of sale, any or all of my securities, contracts, or commitments on the Exchange or other Market or place where such business is usually then transacted and/or at private sale, and without prior demand upon me for additional margin, and/or tender to or demand upon me for the taking up of my account or accounts. You may in like manner and under like conditions buy in any or all of my short commitments, and settle any of my obligations to you whatsoever, and in the event of my demise all the [fol. 138] provisions herein contained in respect to the liquidation and settlement by you of my account or accounts shall hold, whether or not my personal representative has been appointed. Any failure on your part to avail yourselves of the privileges or provisions herein set forth shall not be a waiver by you of any of your rights herein provided, but no waiver contained in this paragraph shall be deemed applicable to any transaction for which the Federal Law and Regulations make other provisions.

Notices of all purchases and sales, and statements of account current as rendered by you from time to time shall be deemed approved and accepted by me unless I immediately take exception thereto in writing, and when in your usual course of business you send any communication to me, either by mail and/or telegraph at the address as given below, or at my last address as known to you, I acknowledge and agree that such procedure on your part shall be considered by both of us as having the effect that such communication was received promptly by me.

If at any time my account or accounts shall be closed and re-opened, this agreement shall remain in full force and effect, and no waiver, modification, or alteration hereof shall be binding upon you unless confirmed in writing and signed by one of the members of your firm.

All Continent Corporation, Name by Eva Fox, President.

Communication to be sent to Eva Fox, Hotel Claridge, Atlantic City, N. J.

Business or Occupation ——.

Dated January 7th, 1936.

Witness Mona Fox, Secretary.

[fol. 139] EXHIBIT "B" TO ANSWER

Customer's Agreement

J. W. Sparks & Co.

GENTLEMEN:

I (We) hereby reaffirm the consent heretofore given by me (us) authorizing you to lend, to yourselves as brokers, or to others, any securities which you may be carrying for my (our) account or under my (our) control on margin.

This authorization shall apply to any and all accounts carried by you for me (us) or under my (our) control, and may be revoked by the undersigned at any time, by reasonable notice in writing.

All Continent Corporation, by (Signed) Eva Fox, President.

Dated January 7, 1936.

COMMONWEALTH OF PENNSYLVANIA,
City and County of Philadelphia, ss:

John S. Wynn, being duly sworn according to law, deposes and says, that he is one of the defendants in the above entitled proceeding; that he has full authority to, and hereby does file this Answer on behalf of the defendants therein mentioned, and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

John S. Wynn.

Sworn to and subscribed before me this 19th day of October, 1936. A. C. Hackett, Notary Public. My commission expires 3/9/1939.

[fol. 140] In District Court of the United States for the Eastern District of Pennsylvania, June Term, 1936

In Equity. No. 9533

All Continent Corporation, Plaintiff,

v.

John S. Wynn, James H. Wynn, Harold A. Longwell, E. Schuyler Jackson, Jr., Russell R. Hires, Archibald W. Austin, James B. Borden, Frederick W. Winterberg, J. Maurice Wynn and James A. Longwell, Copartners Trading under the Firm Name of J. W. Sparks & Company; Capital Company, and Hiram Steelman, Trustee of the Estate of William Fox, a Bankrupt, Defendants

Notice of Motion of Capital Company

Now comes Capital Company, one of the defendants, in the above-entitled cause, appearing specially for the purpose set forth and for no other, and on the pleadings had herein moves the Court to quash the writ of subpoena, to vacate the Court's order dated the 8th day of September, [fol. 141] 1936, and to dismiss the Bill of Complaint insofar as said subpoena, order and Bill of Complaint relate to the said defendant, for the reason that this Court is without jurisdiction of this defendant, because this defendant is not a resident of the Eastern District of Pennsylvania or of the Commonwealth of Pennsylvania, and no valid service has been made on said defendant.

This defendant further moves that in the event the foregoing motion is denied, its time to appear, plead, answer or demur be extended for a period of 20 days from the filing of an order to that effect.

Benjamin O. Frick, Evans, Bayard & Frick, Attorneys for said defendant, Appearing herein specially and only for the purpose of this motion.

[fol. 142] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1936

No. 6253

ALL CONTINENT CORP., Appellant,

vs.

HIRAM STEELMAN, Trustee in Bankruptcy of William Fox, Appellee

And afterwards, to wit, the 13th day of November, 1936, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable J. Warren Davis and Honorable J. Whitaker Thompson, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 1st day of December, 1936, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 143] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1936

No. 6253

ALL CONTINENT CORPORATION, Appellant,

v.

HIRAM STEELMAN, Trustee in Bankruptcy of William Fox, Bankrupt, Appellee

Appeal from the District Court of the United States for the District of New Jersey

OPINION—Filed December 1, 1936

Before Buffington, Davis and Thompson, Circuit Judges

BUFFINGTON, Circuit Judge:

This is an appeal from a decree entered by the United States District Court for the District of New Jersey, hereinafter called the New Jersey Court, upon a bill filed by

the appellee, enjoining the appellant from prosecuting a suit in equity against him in the United States District Court [fol. 144] for the Eastern District of Pennsylvania, hereinafter called the Pennsylvania court. This suit was brought in the Pennsylvania Court to clear an encumbrance and cloud upon the title to certain securities held by J. W. Sparks & Co., brokers, with whom the appellant had an account. Sparks & Co. was joined as one of the defendants in the Pennsylvania suit. The other defendant, in addition to Sparks & Co. and the appellee, was the Capital Company, a corporation organized and existing under the laws of the State of California.

The appellee, who is trustee of the estate of William Fox, bankrupt, was joined as a party defendant in the Pennsylvania suit because it is contended that these securities with others whose title is in the appellant really belonged to William Fox, and now belong to the trustee of his estate in bankruptcy. Sparks & Co. was made a party because it has possession of the securities against which it has a claim for about $300,000 and in consequence is vitally interested in the question of their ownership. The Capital Company was made a party because it has a judgment against William Fox, and by means of certain supplementary proceedings in New York it has created a cloud upon the title of the securities.

The Capital Company claims these securities and in certain supplementary proceedings issued and served upon Sparks & Co., a subpœna under the authority of section 781 of the Civil Practice Act of New York which provides, among other things, that a "third person • • • is forbidden to transfer • • • property belonging to the judgment debtor • • • until further order of the court" and that anyone who violates "the provisions of such restraining provisions shall be subject to punishment [fol. 145] by the court by fine or imprisonment or either as and for a contempt". This created a serious situation for Sparks & Co. It had possession of property against which it had a claim for about $300,000, which no one disputes, but the same property is claimed by the Capital Company and the trustee in bankruptcy on the ground that it in fact belonged to William Fox and now is an asset of his estate in bankruptcy. All Continent Corporation requested Sparks & Co. to transfer some of these securities, but it re-

fused, because it could not afford to run the risk of being adjudged guilty of contempt and of the consequences thereof. The All Continent Corporation thereupon filed a bill in the Pennsylvania Court to clear the encumbrance and cloud upon the title to the securities pursuant to section 57 of the Judicial Code (Title 28 U. S. C. A. section 118), which among other things provides that:

"When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be."

Sparks & Co. filed an answer wherein it admitted that the securities were received by it from the appellant, that it had no knowledge that any of the securities belonged to William Fox and that it believed that they belonged to the [fol. 146] appellant, but that it refused to transfer any of them or to permit the appellant to deal in or with the account because the subpœna restrained it from so doing. In order to protect its own interest, it joined in the prayer of the bill and requested the court to determine the rights and interests of all parties in suit.

As above stated after the suit had been begun in the federal court in Pennsylvania, the appellee filed a petition in the New Jersey Court and prayed that the court enjoin the prosecution of the suit begun by the appellant in the Pennsylvania Court. No answer to the petition was filed, but a motion to dismiss the petition was filed by the All Continent Corporation. This the court denied and entered a decree enjoining the prosecution in the Pennsylvania Court against the trustee in bankruptcy. From this decree an appeal has been taken to this court.

The real question in issue here is whether or not the New Jersey Court had the power to enjoin the appellant from prosecuting its suit, under the facts in this case, in the Pennsylvania Court. The New Jersey court assumed and exercised jurisdiction on the ground that the continuance of the suit in the Pennsylvania Court would interfere with the orderly administration of the bankrupt estate which was proceeding under section 21 (a) of the Bankruptcy Act in the New Jersey Court.

Sparks & Co. is located in Philadelphia and has possession of the securities there, in the Eastern District of Pennsylvania. There is and can be no question about the jurisdiction of the Pennsylvania court. Under the facts in this case section 57 of the Judicial Code empowered the appellant to bring a suit to remove the encumbrance and cloud upon the title to the securities and since they were held in [fol. 147] the Eastern District of Pennsylvania by Sparks & Co. the suit was brought in the only court and district where it could be effectively maintained. Section 57 of the Judicial Code; In re Interocean Transportation Co. of America, Inc., 232 Fed. 408; In re Green, 207 Fed. 693; Copeland v. Martin, 182 Fed. 805. That being true in order to justify the action of the New Jersey Court, it must clearly appear that it had sound legal grounds to restrain the proceedings properly brought under the authority of the Judicial Code in the Pennsylvania Court. There is no merit in the contention that the Pennsylvania court was not restrained, but only one of the litigants, for the restraint of a proper party is legally tantamount to the restraint of the court itself. Several grounds have been alleged to justify the restraint.

As stated above, the court based the restraint upon the ground of unlawful interference with the orderly administration of the bankrupt estate. Just how the removal of the cloud upon the title to the securities by the only court that can do so will interfere with the administration of the estate does not appear, for it was admitted at the argument before us that within a week after the argument in the New Jersey Court of the motion for restraint, on the ground that the suit in the Pennsylvania Court would interfere with his administration and that he was not prepared to defend the suit, the trustee filed a bill seventy pages long

in the Court of Chancery of New Jersey against the appellant and other defendants covering, so far as the appellant is concerned, substantially the same controversy that is involved in the Pennsylvania Court. This bill in the Court of Chancery, while having no bearing upon the conclusion reached in this opinion, really sets forth two separable controversies. By the one between the trustee and the appel- [fol. 148] lant, the trustee seeks to obtain all the property claimed by the appellant and in this the appellant is the only necessary party defendant; by the other, he seeks to set aside a certain trust agreement and in this the other defendants are the only necessary parties defendant.

The trustee did not specifically allege that the identical securities held by Sparks & Co. belong to Fox, but did say that all of the assets of the appellant belonged to Fox; and as a matter of fact the securities in controversy here are a part of the appellant's property alleged to belong to Fox. In order for the trustee to establish his ownership of all the property of the appellant including the securities in the possession of Sparks & Co., on the ground that it in fact belonged to Fox, it is necessary for him to prove all of his averments in his bill in the Court of Chancery which relate to the appellant. The same proof will have to be made in the Pennsylvania Court as to the securities here in question. Under these circumstances, a decree made in favor of appellee in the Pennsylvania suit could only be based upon a finding by that court that all of the assets of the appellant belong to the appellee. Such a finding would be binding and conclusive upon appellant, not only in the Pennsylvania court, but in every other court in which that question might be litigated between the parties. Under these circumstances, the Pennsylvania Court having first acquired jurisdiction of the property and controversy is entitled to exclusive jurisdiction and the institution of the suit in chancery was an attempt to oust the Pennsylvania court of the jurisdiction which it had previously and validly acquired. The appellant is entitled to maintain the exclusive jurisdiction which it thus acquired under the authority of section 57 of the Judicial Code and may, upon proper application, restrain the trustee from litigating the controversy else- [fol. 149] where. Ward et al. v. Foulkrod, et al. 264 Fed. 627; Franz v. Franz, et al. 15 Fed. (2) 797 (certiorari denied in 273 U. S. 756).

The institution of the proceedings in the New Jersey Court by which the trustee secured the injunction against the appellant is based upon the assumption that the securities in the possession of Sparks & Co. belong to the estate of William Fox in bankruptcy. The Capital Company has been and is seeking to get these securities, not for the creditors as a whole but for itself. The action to do this was begun long before Fox became a bankrupt and by supplementary proceedings in New York the cloud upon the title to them has been created. The claim of that company is accordingly adverse to the interests of the trustee who represents all the creditors generally. It is, therefore, not only his right to appear in the Pennsylvania court and defend that suit, but it is his official duty, and neglect or failure to do so would be a clear breach of that duty.

The trustee argues that the bankruptcy court acquired jurisdiction over these securities in case they should subsequently "be determined to be the property of the bankrupt", and, therefore, the suit in the Pennsylvania Court against him should have been restrained. That entirely begs the question and such law would prevent every plenary suit. The question is the determination of the ownership of the property by a plenary suit which had been properly brought in the Pennsylvania court. The trustee is improperly attempting to try the same controversy by a plenary suit in the Court of Chancery after the Pennsylvania Court had acquired exclusive jurisdiction.

Under the facts in this case, the District Court of New Jersey did not have power to restrain the suit which the statute clearly authorized to be brought in the Pennsylvania court.

[fol. 150] The order restraining the appellant from proceeding with its suit against the trustee in the Pennsylvania court is accordingly reversed and appellant is permitted to proceed with its suit.

A true Copy. Teste:

——— ———, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 151] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1936

No. 6253

ALL CONTINENT CORP., Appellant,

vs.

HIRAM STEELMAN, Trustee in Bankruptcy of William Fox, Appellee

Appeal from the District Court of the United States, for the District of New Jersey

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the order of the said District Court restraining the All Continent Corporation from proceeding with its suit against the Trustee in Bankruptcy of William Fox in the Pennsylvania Court be, and the same is hereby reversed, with costs.

Philadelphia, December 1, 1936.

Per Curiam.

Buffington, Circuit Judge.

Endorsements: Order Reversing Order of District Court. Received & Filed Dec. 1, 1936. Wm. P. Rowland, Clerk.

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[fol. 152] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Supplemental Record and proceedings in this Court in the case of All Continent Corp., Appellant, vs. Hiram Steelman, Trustee in Bankruptcy of William Fox, Appellee, No. 6253,

on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 29th day of December in the year of our Lord one thousand nine hundred and thirty-six and of the Independence of the United States the one hundred and sixty-first.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal United States Circuit Court of Appeals, Third Circuit.)

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[fol. 153] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 15, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Cricuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Endorsed on cover: File No. 41,178. U. S. Circuit Court of Appeals, Third Circuit. Term No. 638. Hiram Steelman, Trustee in Bankruptcy of William Fox, a bankrupt, petitioner, vs. All Continent Corporation. Petition for a writ of certiorari and exhibit thereto. Filed January 11, 1937. Term No. 638, O. T., 1936.